

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

DONALD FRANKS,)	
)	
Plaintiff,)	
)	
v.)	CASE NO.: 2:07CV352-MEF
)	
UNIFUND CCR PARTNERS,)	
)	
Defendant.)	

**RESPONSE TO PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Unifund CCR Partners ("Defendant") responds to Plaintiff's Motion for Partial Summary Judgment as follows:

DISPUTED FACTS

1. Plaintiff asserts that it is undisputed that Angela Freckman "relied entirely on 'information transmitted to Unifund from Providian National Bank.'" (Pl.'s Undisputed Fact No. 8.) To the extent that Plaintiff construes this fact as evidence that Ms. Freckman's affidavit lacks foundation or that she was not sufficiently informed when she executed the affidavit, Unifund disputes this fact. As Unifund stated in its interrogatory responses, Unifund relied on information from Providian which, on information and belief, was kept in the ordinary course of Providian's business. See Exhibit 12 to Pl.'s Summ. Judg. Mot.

2. A genuine issue of material fact exists as to whether Angela Freckman had personal knowledge of the statements in the affidavit and whether her statement in the affidavit that she had "personal knowledge of the facts" was untrue. (Pl.'s Undisputed Fact No. 9.)

Unifund has produced evidence establishing that, before executing the affidavit, Ms. Freckman gained personal knowledge of the items set forth in her affidavit by reviewing files provided to Unifund by Provident National Bank, the original account issuer. See Freckman Aff. (attached as Exhibit A) at ¶ 7. Plaintiff does not dispute that Ms. Freckman reviewed this information before executing the affidavit. See Pl.'s Undisputed Fact No. 8.

3. A genuine issue of material fact exists as to whether Franks applied for the credit card, received or used the card, received or saw statements relating to this account, made payments on the account, or has responsibility for or a relationship with this credit card account. (Pl.'s Undisputed Fact No. 10.) The evidence in this case shows that Franks lives at 4223 Matterhorn Court in Montgomery. See Pl.'s Interrog. Resp. No. 1 (attached as Exhibit B). The evidence also shows that the credit card account was opened in 1999, that Franks lived at the 4223 Matterhorn address at the time the account was opened, and that statements for the account were sent to Donald Franks at 4223 Matterhorn Court for a period of several years. See Freckman Aff. at ¶ 8. Franks alleges that he has no responsibility for or relationship with the account and alleges that the account was opened by his former wife without his permission; however, the evidence shows that the account was opened almost two years before he and his wife filed for divorce. See Freckman Aff. at ¶ 4; see Exhibit C (Franks' Divorce Decree and Settlement Agreement).

4. A genuine issue of material fact exists as to whether Franks' former wife applied for the account using his name without his knowledge or permission, as Franks admits in his summary judgment brief that he does not know this to be a fact. (Pl.'s Undisputed Fact No. 11.) Further, as set forth above, the account was opened approximately two years before he filed for

divorce, when his wife was residing at 4223 Matterhorn Court. See Freckman Aff. at ¶¶ 5 and 8; see Exhibit C (Franks' Divorce Decree and Settlement Agreement).

5. Plaintiff asserts that it is undisputed that Unifund acknowledged he was disputing this debt in a letter dated July 19, 2006. (Pl.'s Undisputed Fact No. 13.) However, the letter simply states that, in response to Franks' request for information, the author enclosed a statement showing Unifund as the client. See Exhibit 4 to Pl.'s Summ. Judg. Mot. The letter also advised Franks that Providian was the original issuer of the account and provided him with the account number. Id. This letter does not acknowledge that the debt was disputed by Franks. Id.

6. A genuine issue of material fact exists as to whether Unifund was "unable to obtain" the "information and the document requested" by Plaintiff in the underlying state court action. (Pl.'s Undisputed Fact No. 13.)¹ To the extent that the Plaintiff contends that Unifund was unable to obtain any documentation showing that Franks owed the debt in question, Unifund disputes this fact. The evidence shows only that Unifund was unable to obtain documents requested by Franks by a certain date and had agreed to dismiss the case if it did not receive the documents by that certain date. See Pl.'s Mot. for Summ. Judg. at Exhibit 9 (letter from previous counsel for Unifund stating: "Per our conversation of January 5, 2006, I am writing to inform you that I am dismissing the above matter with prejudice. We have not received the documentation you requested as of today and I agreed to the above term.").

7. A genuine issue of material fact exists as to whether Franks owed the debt claimed by Unifund (Pl.'s Undisputed Fact No. 16.), as explained in Paragraphs 3 and 4 above.

8. A genuine issue of material fact exists as to whether Unifund knew at the time that it reported information to the credit reporting agencies that Franks disputed the debt in question and whether any alleged failure by Unifund to advise the credit reporting agencies that

¹ There are two Paragraph No. 13s in Plaintiffs' Brief.

the debt was disputed (Pl.'s Undisputed Fact No. 20.) was the result of a bona fide error. The evidence submitted by the Plaintiff does not conclusively establish (1) all of the dates on which Unifund reported information to the credit reporting agencies or (2) that Unifund knew the debt was disputed when it reported information to the credit reporting agencies. See Exhibits 5A, 5B, and 5C to Pl.'s Summ. Judg. Mot. Additionally, Unifund has produced evidence showing that any failure to report the debt as disputed was the result of a bona fide error. See Freckman Aff. at ¶¶ 9-15. Unifund never received notice that the debt was disputed before turning the account over to collection counsel. Id. at ¶ 12. Unifund requires its collection counsel to advise it if a debtor disputes a claim. Id. at ¶ 9. In this case, the Franks account was turned over to Zarzaur & Schwartz in Birmingham for collection. Id. at ¶ 10. Zarzaur & Schwartz never informed Unifund that Franks was disputed the debt, and Unifund did not receive a copy of Franks' answer denying the allegations in the collection complaint or copies of correspondence from Franks or his attorneys until after the collection lawsuit in state court was dismissed. Id. at ¶ 12-13. It is Unifund's practice to report disputed debts as "disputed" to credit reporting agencies. Id. at ¶ 14. If Unifund had received notice from Zarzaur & Schwartz that Franks disputed the debt, Unifund would have reported the debt as "disputed" to the credit reporting agencies. Id. at ¶ 15.

UNDISPUTED MATERIAL FACTS

1. Plaintiff Donald Franks sued Marchanda Lee Franks for divorce in 2001, and a final decree of divorce was entered in 2002. See Exhibit C. The divorce settlement agreement entered into by the parties states that the parties' real property located at 4223 Matterhorn Court, Montgomery, Alabama, shall be the sole and exclusive property of Donald Franks. Id.

2. The credit card account at issue in this lawsuit was opened in October 1999. (Freckman Aff. at ¶ 4.)

3. Statements for the credit card account were sent to Donald Franks at 4223 Matterhorn Court, Montgomery, Alabama. Id. at ¶ 5.

4. Plaintiff worked on Maxwell Air Force Base from 1997 through 2003 and worked on Gunner Air Force Base for a few months in 2003. (Pl.'s Interrog. Resp. No. 5.)

5. The statements for Franks' credit card account reflect charges and cash advances made at Maxwell Air Force Base in 2000. (Freckman Aff. at ¶ 6.)

SUMMARY JUDGMENT STANDARD

Summary judgment should be granted only if "there is no issue as to any material fact and the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). The party seeking summary judgment bears "the initial burden to show the district court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial." Clark v. Coats & Clark, Inc., 929 F.2d 604, 608 (11th Cir. 1991). Once the moving party has satisfied its responsibility, the burden shifts to the nonmovant to show the existence of a genuine issue of material fact. Id. "If the nonmoving party fails to make 'a sufficient showing on an essential element of her case with respect to which she has the burden of proof,' the moving party is entitled to summary judgment." Id. (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) (footnote omitted)). "In reviewing whether the nonmoving party has met its burden, the court must stop short of weighing the evidence and making credibility determinations of the truth of the matter. Instead, the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." Tipton v. Vergrohr GMBH-Siegen, 965 F.2d 994, 999 (11th Cir. 1992) (internal citations and quotations omitted).

“Summary judgment is justified only for those cases devoid of any need for factual determinations.” Offshore Aviation v. Transcon Lines, Inc., 831 F.2d 1013, 1016 (11th Cir. 1987) (citation omitted).

ARGUMENT

Plaintiff asserts two arguments for granting summary judgment in his favor: First, Plaintiff argues that the undisputed facts show that the Freckman affidavit contained false information. Second, the Plaintiff argues that the undisputed facts show that Unifund failed to report the Franks debt to the credit reporting agencies as disputed. However, as demonstrated above, a genuine issue of material fact exists as to each of these claims, and Plaintiff is not entitled to summary judgment.

I. A genuine issue of material fact exists as to whether Angela Freckman’s affidavit contained false information.

Plaintiff argues in his brief that the Freckman affidavit filed by Unifund in the underlying state court case contained false information. Specifically, Plaintiff claims that the following two statements were false:

There is justly due and owing by the Defendant, Donald Q. Franks, account number 4031140400908090, to [Unifund] the sum of \$4,652.99 and interest.

That the Defendant(s) used or authorized use of a credit card for the purchases of goods and/or services and/or cash advances which use bound the Defendant(s) to the credit card terms and conditions.

See Pl.’s Brf. at 5 (Stmt. of Fact No. 7). However, as explained below, the above statements were not false, and Plaintiff is not entitled to summary judgment.

A. The dismissal of state court action with prejudice does not establish that Franks never owed the debt.

Plaintiff first argues that Freckman’s affidavit contained false information because Franks does not owe the debt in question, as “conclusively established” by a dismissal of the underlying

state court case with prejudice. See Pl.'s Undisputed Fact No. 16. This argument is completely illogical. A dismissal entered nine months after the affidavit was executed does not establish that the affidavit was false when signed. Once the dismissal order was signed, Franks did not owe Unifund the money claimed in the lawsuit, but the dismissal does not establish that Franks never owed the money. As Plaintiff admits, Unifund *voluntarily* dismissed the state court case only because Unifund could not locate particular documents requested by the Plaintiff by a certain date. See Pl.'s Stmt. of Facts at ¶ 14; see also Exhibit 9 to Pl.'s Summ. Judg. Mot. Unifund has never stated, in either the state court action or this lawsuit, that Franks did not owe the debt.

Plaintiff is correct that a dismissal with prejudice is an adjudication on the merits; however, that does not establish retroactively that Freckman's affidavit was false. There are many reasons why a party might settle or dismiss a case even if the party has meritorious claims. While there are no Alabama or Eleventh Circuit cases directly addressing the Plaintiff's argument on this issue, the Georgia Supreme Court's statement in Marchman & Sons, Inc. v. Nelson, 306 S.E. 2d 290, 293 (Ga. 1983) is instructive: "A dismissal with prejudice *operates* as an adjudication on the merits. It is a final disposition. It bars the right to bring another action on the same claim or cause. **However, it is not, in truth, a determination of the issues in the case. It merely functions as, or operates as, an adjudication of those issues without an actual presentation of and decision on them.**" Therefore, although the dismissal with prejudice of the state court case prevents Unifund from bringing another action against Franks for the same claim, it in no way establishes that Franks did not owe the debt for purposes of determining whether Freckman's affidavit contained false information.

If the Court were to accept the Plaintiff's argument, even a settlement agreement reached with a defendant—as opposed to a dismissal with no settlement—would establish that a

defendant never owed money to a plaintiff. For example, in the underlying state court action, if Franks had agreed to settle Unifund's claim by paying \$100 in exchange for a dismissal with prejudice, under Franks' argument in this case, such a dismissal would establish that Franks never owed the money in the first place. So, although the doctrine of *res judicata* prohibits Unifund from filing another lawsuit against Franks to collect on the debt made the basis of the underlying state court action, the dismissal with prejudice "is not, in truth, a determination of the issues in the case. It merely functions as, or operates as, an adjudication of those issues without an actual presentation of and decision on them." For this reason, the dismissal of the state court action does not establish that Franks never owed the debt and, in turn, establish that Angela Freckman's affidavit contained false information.

B. Plaintiff's denial of owing the debt does not establish that Angela Freckman's affidavit was false.

Plaintiff next argues that there is no dispute that Freckman's affidavit contains false information because Franks "has adamantly and consistently maintained that he never asked for or agreed to be responsible for the credit card account." If the Court were to accept this, any defendant would be entitled to summary judgment if he "adamantly and consistently maintain[s]" that he is not liable. Franks also states in his affidavit that he did not know anything about the credit card account, that he did not apply for the card, that he never received or used the card, that he had not received any statements for the card, and that he had not made any payments on the card. However, Franks lives at 4223 Matterhorn Court in Montgomery. See Pl.'s Interrog. Resp. No. 1 (attached as Exhibit B). The credit card account was opened in 1999, and statements for the account were sent to Donald Franks at 4223 Matterhorn Court. (Freckman Aff. ¶¶ 4, 6.) Franks believes his former wife opened the account in his name, but the account was opened almost two years before he and his wife filed for divorce. See Freckman Aff. ¶ 4

and Exhibit C (Franks' Divorce Decree). Franks' denial that he owed the debt does not trump the evidence produced by Unifund showing that he did owe the debt and does not establish that Freckman's affidavit is false.

Further, a claim similar to the Franks' claim has already been addressed in the context of claim under the Fair Debt Collection Practices Act ("FDCPA"). In King v. Asset Acceptance LLC, 452 F.Supp.2d 1272 (N.D. Ga. 2006), the plaintiff sued a debt collector under the FDCPA claiming that his girlfriend had opened a credit card account without his permission. In granting summary judgment for the defendant, the court examined another similar case, Farren v. RJM Acquisition Funding LLC, 2005 WL 1799413, at *9 (E.D. Pa., July 26, 2005), where the district court rejected the plaintiff's claim that the defendant made a false representation as to the character or legal status of the debt or in an attempt to collect the debt in violation of the FDCPA even though it was later discovered that the debt did not belong to the plaintiff. The Farren court had found compelling the fact that there was no evidence to show that the defendant was aware that the debt was not the plaintiff's when it reported the debt, stating:

If the Court were to interpret the FDCPA as [the plaintiff] requests, any debt collector or data furnisher who communicates in anyway about a debt that is later discovered not to be owed by the individual the debt collector originally thought owed it would be liable under the FDCPA. The Court will not interpret this statute so broadly as to create such a liability. The FDCPA was intended to protect debtors from offensive, misleading, and aggressive tactics by debt collectors, not to hold debt collectors or others in the industry that refrain from such tactics to a standard of omniscience as to whether or not a debt will eventually be found to belong rightfully to someone other than the individual first identified as the debtor.

King, 452 F.Supp.2d at 1281-82 (citing Farren, at *9).

All that Franks essentially alleges in this lawsuit is that Unifund sued him for a debt that was incurred by his former wife and that it subsequently dismissed that lawsuit. Assuming, arguendo, that Franks' former wife did incur the debt in question in Franks' name without his

permission, that fact does not establish that any of the statements in Unifund's state court complaint or affidavit were false, deceptive, or misleading. Again, Franks' denial that he owed the debt does not trump Unifund's evidence and does not establish that Freckman's affidavit was false. At most, the denial could only establish a question of fact that precludes summary judgment in his favor.

C. Angela Freckman's affidavit was based on personal knowledge.

Plaintiff's final argument concerning Ms. Freckman's affidavit is that it was false because it was not based on personal knowledge. Plaintiff essentially argues that, because, as he claims, he did not owe the debt, the affidavit could not have been based on personal knowledge. Plaintiff states: "If Mr. Franks did not owe the money claimed by Unifund, then it follows inevitably that Ms. Freckman's affidavit... is a 'false, deceptive, and misleading' statement." (Pl's. Brf. at 10.) However, this argument is based on Franks' claim that he did not owe the debt and that he did not apply for the credit card, facts which are still very much in dispute in this lawsuit, as explained above.

Other than his denial of owing the debt and conclusory statements that Ms. Freckman's affidavit contained false information, Plaintiff offers no evidence demonstrating that the affidavit contains false information or that Ms. Freckman did not have personal knowledge of facts in the affidavit. Unifund has produced evidence showing that Ms. Freckman personally reviewed account documents kept in the ordinary course of Unifund's business and Providian's business before signing the affidavit. Plaintiff seems to suggest that Ms. Freckman had to have witnessed Franks signing the credit card application and using the credit card in order to have personal knowledge. However, "[p]ersonal knowledge, as innumerable decisions from the federal courts make clear, can be gleaned from a review of records pertinent to a given case." Stenger v. World

Harvest Church, Inc., 2006 WL 870310, *12 (N.D. Ga., Mar. 31, 2006) (citing Schwimmer v. Kaladjian, 988 F.Supp. 631, 642 (S.D.N.Y. 1997) (doctor's affidavit, based on review of patient's medical records, was "sufficient to meet the personal knowledge requirement of Rule 56(e)"); Baker v. Beneman, 256 F.Supp.2d 999, 1005 (E.D.Mo. 2003) ("It appears to the Court that Mr. Arnold based his Declaration upon his review of the loan files and his experience as a Farm Loan Manager. His statements are therefore based upon his personal knowledge and are not inadmissible hearsay. The Court does not believe the statements in Mr. Arnold's Declaration are improper under Rule 56(e), and for these reasons, the Court will deny the Motion to Strike."); Beaver v. Howard Miller Clock Co., 852 F.Supp. 631, 634 (W.D. Mich. 1994) (expert affidavit sufficient when stated that opinions based on review of materials generated by discovery); Washington Cent. R.R. Co. v. Nat'l Mediation Bd., 830 F.Supp. 1343, 1353 (E.D. Wash. 1993); ("Based on personal knowledge of the files and records, a declarant may testify to acts that she or he did not personally observe but which are described in the record, including requests or statements by third persons made to someone other than the declarant."); and Vote v. United States, 753 F.Supp. 866, 868 (D. Nev. 1990) (IRS agent's affidavit "comple[d] with Rule 56(e) in that it [was] based upon her personal familiarity with plaintiff's case and her review of plaintiff's file")). Thus, Ms. Freckman's affidavit does not lack the proper foundation simply because she did not see Franks using the card; her review of the relevant documents relating to the credit card account provided her with personal knowledge of the matters set forth in her affidavit.²

² Plaintiff claims that an affidavit like Ms. Freckman's also would not be acceptable evidence under Rule 56(e). See Pl.'s Brf. at 11 n.1. However, an affidavit executed on the basis of the affiant's review of records is admissible under Rule 56(e). See, e.g., Koncul Enterprises, Inc. v. Nationscredit Financial Serv. Corp., 2001 WL 34052996, *5 (S.D. Ga. Aug. 13, 2001) ("Elliot's affidavit is admissible evidence since it is based, in part, on her review of NationsCredit's computer records. As Assistant Vice President of NationsCredit's Operations Support, Elliot is familiar with such records"); KW Plastics, 131 F.Supp.2d

Additionally, to the extent that Plaintiff contends Unifund had to do more than review account documents before filing the state court lawsuit, nothing requires a plaintiff to fully prove a lawsuit before filing it. As pointed out in Unifund's Motion for Summary Judgment, courts from around the country have uniformly held that a debt collector does not violate the FDCPA simply because it files a lawsuit without the immediate means of proving the debt. "Even when viewed from the perspective of an unsophisticated consumer, the filing of a debt-collection lawsuit without the immediate means of proving the debt does not have the natural consequence of harassing, abusing, or oppressing the debtor. Any attempt to collect a defaulted debt will be unwanted by a debtor, but employing the court system in the way alleged by [the plaintiff] cannot be said to be an abusive tactic under the FDCPA." Harvey v. Great Seneca Fin. Corp., 453 F.3d 324, 330-31 (6th Cir. 2006) (emphasis added); see also Nickoloff v. Wolpoff & Abramson, L.L.P., 2007 WL 2735289, at *1 (C.D. Cal., Sept. 18, 2007) ("A debt collector does not violate the FDCPA merely because it files a lawsuit without immediate means of proving the debt."); Clark v. Unifund CCR Partners, 2007 WL 1258113 (W.D. Pa., Apr. 30 2007) (no FDCPA violation to file with insufficient information attached to complaint); Deere v. Javitch, Block & Rathbone, 413 F. Supp. 2d 886 (S.D. Ohio 2006) (no FDCPA violation to dismiss complaint when debtor disputes); Davis v. NCO, 2006 WL 290491 (S.D. Ohio, Feb. 7, 2006) (same). As the Harvey court stated, "a debt may be properly pursued in court, even if the debt collector does not yet possess adequate proof of its claim." Harvey, 453 F.2d at 333.

In summary, neither the dismissal of the underlying state court case nor Franks' own denial of owing the money render Angela Freckman's affidavit false, and Unifund has produced

at 1272 (same); Searles v. First Fortis Life Ins. Co., 98 F.Supp.2d 456, 462 (S.D.N.Y. 2000) ("The Court has reviewed her affidavit and the supporting documents and finds that the statements contained in her affidavit are based either on personal knowledge or information garnered from the review of relevant documents in her official capacity as a benefits specialist. In addition, Ms. Wagoner would be competent to introduce at trial the documents on which she relies").

evidence showing that she gained personal knowledge about Franks' credit card account before signing the affidavit. At a minimum, the evidence submitted by Unifund creates a question of fact as to whether Franks, as opposed to his former wife, incurred the charges on the credit card and whether Angela Freckman had personal knowledge of the facts in her affidavit. Therefore, Plaintiff is not entitled to summary judgment based on his claim that Angela Freckman's affidavit contained false information.

II. Any failure by Unifund to report the debt to credit reporting agencies as disputed was the result of a bona fide error.

Unifund does not concede that Plaintiff has submitted competent evidence establishing when Unifund reported information to the credit reporting agencies, that Unifund failed to report Franks' debt as disputed to the credit reporting agencies, or that Unifund knew the debt was disputed when it reported information to the credit reporting agencies. The documents submitted by the Plaintiff indicate that the debt was reported as past due, but Plaintiff has submitted no evidence showing that the reporting dates on the documents reflect the dates that Unifund actually transmitted information to the credit reporting agency. See Exhibits 5A, 5B, and 5C to Pl's Summ. Judg. Mot. In any event, even if the Court finds that Plaintiff's documents do establish that Unifund reported the debt to credit reporting agencies without reporting that the debt was disputed, Plaintiff is not entitled to summary judgment on this claim because any failure to report the debt as disputed was due to a bona fide error.

The FDCPA explicitly states that a debt collector may not be held liable if he "shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." See 15 U.S.C. § 1692k(c). As established by the attached affidavit of Angela Freckman, when Unifund turns an account over to collection counsel, Unifund's practice is to require

collection counsel to notify Unifund if the debtor disputes the debt. Franks' account was sent to the law firm of Zarzaur & Schwartz in Birmingham, Alabama, for collection. Before turning Franks' account over to Zarzaur & Schwartz, Unifund received no communication from Franks indicating that he disputed the debt at issue in this lawsuit. Plaintiff has submitted no evidence indicating that he did report the debt as disputed before the collection complaint was filed. The only evidence submitted by the Plaintiff indicating that he disputed the debt is his answer to the state court collection complaint and a letter from Franks' attorney to Unifund's collection counsel regarding discovery requests. (Pl.'s Summ. Judg. Mot. at Exhibits 3 and 8 thereto.) However, both of these documents were sent to Zarzaur & Schwartz, which never notified Unifund that Franks disputed the debt.

Moreover, despite Unifund's requirement that collection counsel notify Unifund if a debtor disputes the debt, Unifund did not receive a copy of Franks' answer denying the allegations in Unifund's collection complaint and did not receive copies of any correspondence from Franks or his attorneys until after the state court case was dismissed. Unifund's practice is to report disputed debts to credit reporting agencies as "disputed." If Unifund had received notice from Zarzaur & Schwartz that Franks disputed the debt, Unifund would have reported the debt as disputed to the credit reporting agencies, and Unifund is, therefore, not liable on this claim pursuant to 15 U.S.C. § 1692k(c).

For the above reasons, Plaintiff is not entitled to summary judgment on his claim that Unifund failed to report the debt as disputed to the credit reporting agencies. The attached Freckman affidavit establishes that any failure to report the debt as disputed was the result of a bona fide error, absolving Unifund of any liability on this claim. At a minimum, the affidavit creates a question of fact on this point, precluding summary judgment in Plaintiff's favor.

CONCLUSION

Unifund has established that genuine issues of material fact exist as to whether Angela Freckman's affidavit contained false information and whether any failure by Unifund to report Franks' account to the credit reporting agencies as disputed was the result of a bona fide error. This is simply not a case "devoid of any need for factual determinations" with respect to these two claims. Offshore Aviation v. Transcon Lines, Inc., 831 F.2d 1013, 1016 (11th Cir. 1987) (citation omitted). Therefore, Unifund respectfully requests that this Court deny Plaintiff's Motion for Partial Summary Judgment.

Respectfully submitted on this 21st day of November, 2007.

/s/ Angela R. Rogers

Chris Hawkins

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CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Edward M. Wayland, Esq.
Post Office Box 17
Montgomery, Alabama 36101

and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: Not applicable.

s/ Angela R. Rogers

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Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

DONALD FRANKS,

Plaintiff,

v.

UNIFUND CCR PARTNERS,

Defendant.

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CASE NO.: 2:07CV352-MEF

AFFIDAVIT

STATE OF OHIO

COUNTY OF HAMILTON

BEFORE ME, the undersigned, in and for said state and county, personally appeared Angela Freckman, who, being fully sworn, deposes and says as follows:

1. My name is Angela Freckman. I am over the age of nineteen years and am competent to testify to the matters contained in this affidavit, which are true and correct and based on my personal knowledge. I am authorized to make this affidavit on behalf of Unifund CCR Partners.

2. I have personally reviewed the documents in Unifund's file on the credit card account in dispute in this lawsuit.

3. Attached as Exhibit 1 is a true and correct copy of the Bill of Sale in which Unifund purchased the credit card account at issue in this lawsuit from Providian National Bank ("Providian").

4. When Unifund purchases an account from Providian, it obtains information for that account electronically from Providian. Attached as Exhibit 2 is a true and correct copy of the information Unifund obtained electronically on Franks' account, which shows the name on the account, the account number, the amount owed, the address of the cardholder, and other account details. Exhibit 2 is part of Unifund's file on this matter and is kept in the ordinary course of business. According to Exhibit 2, Franks' account was opened with Providian on October 4, 1999.

5. Attached as Exhibit 3 are true and correct copies of computer printouts showing the information that Unifund received from Providian regarding Franks' account. Exhibit 3 is part of Unifund's file on this matter, and those documents are kept in the ordinary course of business. According to the documents in Exhibit 3, Franks' account was opened with Providian on October 4, 1999.

6. Attached as Exhibit 4 are true and correct copies of statements sent from Providian and Unifund to Donald Q. Franks at 4223 Matterhorn Court, Montgomery, AL 36116. The documents in Exhibit 4 are part of Unifund's file on this matter and are kept in the ordinary course of business. These statements reflect payments and charges made to the account from August 2000 to July 2002, including several charges and cash advances at Maxwell Air Force Base in the year 2000.

7. Attached as Exhibit 5 is a true and correct copy of the affidavit I signed in connection with Unifund's attempt to collect from Donald Franks the outstanding balance owed on the above-referenced credit card account. Before signing the affidavit attached as Exhibit 5, I personally reviewed the documents attached as Exhibits 2 and 3.

8. Attached as Exhibit 6 are true and correct copies of computer printouts run by Unifund using Accurant, a Lexis-Nexis database. These documents show that an individual named Donald Q. Franks has lived at 4223 Matterhorn Court in Montgomery since March 1992. This address matches the address listed on the credit card account. Additionally, the social security number for the individual listed on Exhibit 6 matches the social security number used to establish the credit card account. These documents also reflect that an individual named Marchanda L. Franks resided at the same address from March 1992 through December 2004.

9. When Unifund turns an account over to collection counsel, Unifund's practice is to require collection counsel to notify Unifund if the debtor disputes the debt.

10. Franks' account was sent to the law firm of Zarzaur & Schwartz in Birmingham, Alabama, for collection.

11. Before turning Franks' account over to Zarzaur & Schwartz, Unifund received no communication from Franks indicating that he disputed the debt at issue in this lawsuit.

12. Zarzaur & Schwartz never notified Unifund that Franks disputed the debt. Attached as Exhibit 7 are true and correct copies of Unifund's customer service notes and its "Law Suits" computer screen showing all communications and activity on this file.

13. Unifund did not receive a copy of Franks' answer denying the allegations in Unifund's collection complaint and did not receive copies of correspondence to Zarzaur & Schwartz from Franks or his attorneys until after the state court case was dismissed.

14. Unifund's practice is to report disputed debts to credit reporting agencies as "disputed."

15. If Unifund had received notice from Zarzaur & Schwartz that Franks disputed the debt, Unifund would have reported it the debt as disputed to the credit reporting agencies.

FURTHER THE AFFIANT SAITH NOT.


DATED this 21st day of November, 2007.


ANGELA FRECKMAN

STATE OF OHIO)
)
COUNTY OF HAMILTON)

Before me, the undersigned authority, personally appeared ANGELA FRECKMAN, who, being by me first duly sworn, doth depose and say that the matters and things contained in the above Affidavit are true and correct to the best of her information, knowledge, and belief.

Done this 21st day of November, 2007.


Notary Public
My Commission Expires: _____



NATALIE S. ANDERSON
NOTARY PUBLIC
STATE OF OHIO
Comm. Expires
May 11, 2008

Exhibit 1

Bill of Sale

Providian National Bank, for value received and in accordance with the terms of the Purchase and Sale Agreement by and among Providian National Bank, Providian Bank ("Sellers") and Unifund CCR Partners ("Purchaser"), dated as of June 26, 2002 (the "Agreement"), does hereby sell, assign and transfer to Purchaser, its successors and assigns, all right, title and interest in and to the Accounts listed in the Account Schedule attached (as may be amended in accordance with the Agreement) as Appendix A to the Agreement, without recourse and without representation or warranty of collectibility, or otherwise, except to the extent stated in the Agreement.

Executed on 6-27-02

PROVIDIAN NATIONAL BANK

By C. Franks
Print Name SONDRA PICKENS
Title Vice President

Exhibit 2

Account Number	First Name	Last Name	First Name 2	Last Name 2	Address Line 1	Address Line 2	City And State	State
4031140400908090	DONALD Q	FRANKS			4223 MATTERHORN CT		MONTGOMERY AL	AL

**Unifund/Franks
0002**

Zip Code	Joint Account Flag	Home Phone	Business Phone	Current Balance 06/19	Charged on Date	Charged on Amount	Last Payment Amount 06/19
361165517 N		3342840398	3349537478	\$3,450.86	03/16/01	\$3,450.86	\$136.00

Unifund/Franks
0003

Last Payment Date 06/19	SSN	Cash APR	Purchase APR	Open Date	Agent Bank	06/19	Issue Bal	06/19	Credit Score	06/19	Date	1st Past Due
07/24/00	587183866	0.00	0.00	10/04/99	0912		3682		6908			09/13/00

Unifund/Franks
0004

Exhibit 3

PYD0205 | (1) | \$ 5115.50 | Providian National Bank | Collection - Non-Legal

LX302764

DONALD Q FRANKS
4223 MATTERHORN CT
MONTGOMERY, AL 36116

PHONE(h): (334) 284 - 0398

PHONE(w): (800) 367 - 5690

PHONE(A/N):

SSN: 587-18-3866 (Issued in MS)

County: MONTGOMERY

LX302764

Acct # / Debtor ID

Search

Name Search

Last

Account Selected

4031140400908090

24 pages of media

Previous LS

REDACTED

REDACTED

Date Event 26 notes Representative

11/05/2007 12:55:51 PM	Follow up	Jennifer D
08/15/2007 04:20:20 PM	Follow up	Jennifer D
05/23/2007 04:18:57 PM	Inventory Movement	S Ballman
05/02/2007 11:09:11 AM	Mail	D Giltz
04/14/2006 04:17:55 PM	Inventory Movement	Jessica Steven

Account #	Affiliate	Original Bal.	Remaining Bal	Accum. Int. or Fee
4031140400908090	Unifund/Out of Inv.	3,450.86	3,450.86	1,664.64

Exit

Account Totals:

3,450.86

3,450.86

ALL Accts

5,115.50

Account Information**Balance Info**

Chargeoff Balance	3,450.86
Balance Purchased	3,450.86
Remaining Bal.	3,450.86
Interest Rate	0.0600
Interest	1,664.64

Agency

Ownagency	5022
Contract ID	9999
Agency	Unifund/Out of Inv.

Account Details

Account #	4031140400908090
Issuer	PROVIDIAN NATIONAL BANK
Merchant	Providian National Bank
Entered	07/01/2002 05:27:25 PM
Purchased	06/28/2002
Other Acct #	WX124449
Paper Cycle	Sec
Internal Code	

Dates

Date Opened	10/04/1999
Last Purchase Date	/ /
Last Payment Date	07/24/2000
Last Activity Date	07/24/2000
Chargeoff Date	03/16/2001
Unifund Last Payment	/ /

REDACTED

OK

Exhibit 4

646

ACCOUNT NUMBER	BALANCE AS OF	PAYMENT DUE DATE	MINIMUM PAYMENT	PAYMENT ENCLOSED
4031140400908090	04/14/2006 4,652.99	PAST DUE	4,652.99	\$

Make Checks Payable To Unifund

UNIFUND STATEMENT

DONALD Q FRANKS
4223 MATTERHORN CT
MONTGOMERY AL 36116

MESSAGE FROM UNIFUND

YOUR ACCOUNT IS PAST DUE \$4,652.99. THE PAST DUE AMOUNT IS INCLUDED IN THE MINIMUM PAYMENT. PLEASE REMIT IMMEDIATELY. IF YOU HAVE ALREADY SENT A PAYMENT FOR THE ABOVE AMOUNT, THANK YOU.

TRANSACTIONS:

Date	Transaction	IR	Balance	Due	Payments	New Balance
04/14/2006	Providian National Bank's Account Was Issued Under The Name Of Providian National Bank.	0.0600	4,652.99	4,652.99	0	4,652.99

PROMPT CREDITING OF PAYMENTS. TO RECEIVE CREDIT FOR PAYMENTS AS OF THE DATE OF RECEIPT, WE MUST RECEIVE YOUR CHECK OR MONEY ORDER AT:

UNIFUND
10625 TECHWOODS CIRCLE
CINCINNATI, OH 45242

PAYMENTS RECEIVED AT THE ABOVE ADDRESS IN THE MANNER SPECIFIED AFTER THAT TIME WILL BE CREDITED TO YOUR ACCOUNT AS OF OUR NEXT BUSINESS DAY. THE CREDITING TO YOUR ACCOUNT OF PAYMENTS RECEIVED AT ANY LOCATION OTHER THAN THE ABOVE ADDRESS MAY BE DELAYED UP TO 6 DAYS OF RECEIPT.

THIS COMMUNICATION IS FROM A DEBT COLLECTOR. FEDERAL LAW REQUIRES US TO INFORM YOU THAT THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

Unifund/Franks
0005

ACCOUNT NUMBER	PAYMENT DUE DATE	MINIMUM PAYMENT	AMOUNT ENCLOSED
4031-1404-0090-8090	AUGUST 07 2000	\$136.00	\$

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PROVIDIAN VISA CARD

Make Checks Payable to Providian

PROVIDIAN PROCESSING SERVICES
PO BOX 8539
MANCHESTER NH 03108-8539

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PAGE 1 OF 2
000000

DONALD Q FRANKS
4223 MATTERHORN CT
MONTGOMERY AL 36116-5517

40311404009080900013600025099500000

DETACH HERE

MESSAGES FROM PROVIDIAN VISA CARD

YOUR MINIMUM PAYMENT INCLUDES ANY PAST DUE AMOUNTS. PLEASE SEND THIS AMOUNT IMMEDIATELY. IF YOU HAVE ALREADY SENT A PAYMENT FOR THE ABOVE AMOUNT, THANK YOU. YOUR ACCOUNT IS CURRENTLY \$30.95 OVER YOUR APPROVED CREDIT LINE. YOUR MINIMUM PAYMENT DOES NOT INCLUDE YOUR OVERLIMIT AMOUNT. WE ENCOURAGE YOU TO PAY THE OVERLIMIT AMOUNT TO HELP BRING YOUR ACCOUNT BACK INTO GOOD STANDING AND TO AVOID AN OVERLIMIT FEE ON YOUR NEXT STATEMENT.

TRANSACTIONS

Post Date	Description	Trans Date	Reference Number	Amount
06-19	BLOCKBUSTER VIDEO PROMENADE CTR AL	06-15	24435140170024052007088 7841	4.31
06-19	NH SUPERCENTER SE2 MONTGOMERY S AL	06-18	24226380170360577213677 5411	19.52
06-22	STEIN HART #35 MONTGOMERY AL	06-20	24610430173041698037898 5310	31.27
06-26	SHELL NO.50156300043 MONTGOMERY AL	06-24	24299100176041597197003 5541	3.00
06-26	CHEVRON GOVERNOR HOUSE C MONTGOMERY AL	06-25	24625120177400653680538 5541	4.88
06-26	RACETRAC #200 MONTGOMERY AL	06-25	24610430177023306000027 5541	28.61
06-26	BRUNO'S #87 MONTGOMERY AL	06-24	24455010176017876632325 5411	29.89
06-26	STEIN HART #35 MONTGOMERY AL	06-24	24610430177041696093790 5310	34.50
06-27	BRUNO'S #87 MONTGOMERY AL	06-24	24455010176017976128968 5411	28.93
06-27	WINN DIXIE #449 391 MONTGOMERY AL	06-25	24361490178000161842381 5411	29.00
06-28	TEXACO INC 22601883001 MONTGOMERY AL	06-25	24897390179352674800090 5541	5.58
06-28	AAFES MAXWELL SERV STA MAXWELL AFB AL	06-26	24275300179328179025012 9399	22.11
06-28	EXXON POS 75 50611466 MONTGOMERY AL	06-26	24164050179146440255282 5541	30.46
06-30	CHEVRON GOVERNOR HOUSE C MONTGOMERY AL	06-29	24625120181400674443902 5541	36.63
07-03	RITE AID 7071 HARCO MONTGOMERY AL	06-28	24435650182025070711829 5912	28.39
07-06	DIPLOMAT INN MONTGOMERY AL	07-04	24661000187120035010041 7011	34.24
07-13	LATE PAYMENT CHARGE	07-13		0000 29.00

Continued on Next Page

ACCOUNT SUMMARY		STATEMENT DATE		07/13/00	PAYMENT INFORMATION	
		Number of Days in Billing Cycle		29	Account Number 4031 1404 0090 8090	
Previous Balance	\$2,085.34					
- Credits	.00	Purchase		Cash Advance	Credit Line ** \$2,479	
- Payments	.00	Average			Available Credit *** \$0.00	
+ Purchases & other Charges	371.32	Daily Balance - \$2,139.35		\$184.07	Minimum Payment Due \$136.00	
+ Cash Advances	.00	ANNUAL PERCENTAGE RATE 23.99%		23.99%	Payment Due Date 08/07/00	
+ FINANCE CHARGE: On Balances	44.29	Daily Periodic Rate .065728%		.065728%		
+ Late Charge (Previous Due Date 07-09)	29.00					
= NEW BALANCE	\$2,509.85					

000000000 3682 1540

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

Unifund/Franks
0006

ACCOUNT NUMBER	PAYMENT DUE DATE	MINIMUM PAYMENT	AMOUNT ENCLOSED
4031-1404-0090-8090			\$
<input type="checkbox"/> Indicate change of address on back			Make Checks Payable to Providian

PROVIDIAN VISA CARD

PROVIDIAN PROCESSING SERVICES
PO BOX 9539
MANCHESTER NH 03108-9539

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Page 2 of 2

DONALD Q FRANKS
4223 MATTERHORN CT
MONTGOMERY AL 36116-5517

40311404009080900013600025099500000

DETACH HERE

** AVAILABLE CREDIT
** Your Total Available Credit is \$0.00
*** \$0.00 of your Available Credit can be accessed for Cash Advances.
** The portion of your credit line that can be used for Cash Advances is limited to \$2,479.00.

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

Unifund/Franks
0007

ACCOUNT NUMBER 4031-1404-0090-8090	BALANCE AS OF 06/27/02 \$3,339.40	PAYMENT DUE DATE JUL 24, 2002	MINIMUM PAYMENT \$2,270.54	AMOUNT ENCLOSED \$
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PROVIDIAN

PROVIDIAN
P.O. BOX 9023
PLEASANTON CA 94566-9023

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DONALD Q FRANKS
4223 MATTERHORN CT
MONTGOMERY AL 36116-5517

Page 1 of 1
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403114040090809002270540333940000000

Your account is issued by Providian National Bank, Tilton, NH.

DETACH HERE

MESSAGES FROM PROVIDIAN VISA CARD

YOUR PAYMENT IS LATE AND YOUR ACCOUNT IS OVER ITS CREDIT LINE!
Your account may be closed due to nonpayment. To avoid further collection efforts,
please send the past due amount of \$2,170.54, or call us at 1-800-918-9180 today.

Paying just the minimum amount due will not change your overlimit status.
Please send the required funds to ensure your account balance is
within your approved credit limit.

TRANSACTIONS

Post Date	Description	Trans Date	Reference Number	Amount
06-26	PAYMENT RECEIVED -- THANK YOU	06-26	7416851217751111102183 0000	111.46 PY

** AVAILABLE CREDIT

** Your Total Available Credit is \$.00

*** \$0.00 of your Available Credit can be accessed for Cash Advances.

** The portion of your credit line that can be used for Cash Advances is limited to \$2,679.00.

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

ACCOUNT SUMMARY		STATEMENT DATE		PAYMENT INFORMATION	
		06/27/02			
Previous Balance	\$3,450.88	Number of Days in Billing Cycle		28	
- Credits	.00	Purchase Cash Advance		Account Number 4031 1404 0090 8090	
- Payments	111.46	Average		Credit Line **	
+ Purchases & other Charges	.00	Daily Balance		\$2,679	
+ Cash Advances	.00	\$.00		Available Credit ***	
+ FINANCE CHARGE:		ANNUAL PERCENTAGE RATE 0.00%		Minimum Payment Due	
On Balances	.00	Daily Periodic Rate .000000%		\$2,270.54	
+ Late Charge	.00			Payment Due Date	
= NEW BALANCE	\$3,339.40			07/24/02	

00000000 3682 A408

Unifund/Franks
0008

ACCOUNT NUMBER 4031-1404-0090-8090	BALANCE AS OF 06/30/02 \$3,450.86	PAYMENT DUE DATE JUN 28, 2002	MINIMUM PAYMENT \$2,282.00	AMOUNT ENCLOSED \$
---------------------------------------	--------------------------------------	----------------------------------	-------------------------------	-----------------------

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Make Checks Payable to Providian

PROVIDIAN VISA CARD

PROVIDIAN VISA CARD
PO BOX 9539
MANCHESTER NH 03108-8539

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DONALD Q FRANKS
4223 MATTERHORN CT
MONTGOMERY AL 36116-8517

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40311404009080900228200034508600000

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MESSAGES FROM PROVIDIAN VISA CARD

YOUR PAYMENT IS LATE AND YOUR ACCOUNT IS OVER ITS CREDIT LINE!
Your account may be closed due to nonpayment. To avoid further collection efforts,
please send the past due amount of \$2,178.00, or call us at 1-800-918-8180 today.

Paying just the minimum amount due will not change your overlimit status.
Please send the required funds to ensure your account balance is
within your approved credit limit.

TRANSACTIONS

Post Date	Description	Trans Date	Reference Number	Amount
No Activity This Month				

** AVAILABLE CREDIT

** Your Total Available Credit Is \$0.00

*** \$0.00 of your Available Credit can be accessed for Cash Advances.

** The portion of your credit line that can be used for Cash Advances is limited to \$2,679.00.

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

ACCOUNT SUMMARY		STATEMENT DATE 05/30/02		PAYMENT INFORMATION	
		Number of Days in Billing Cycle 31			
Previous Balance	\$3,450.86			Account Number 4031 1404 0090 8090	
- Credits	.00	Purchase Cash Advance		Credit Line ** \$2,679	
- Payments	.00	Average Daily Balance \$0.00 \$0.00		Available Credit *** \$0.00	
+ Purchases & other Charges	.00	ANNUAL PERCENTAGE RATE 0.00% 0.00%		Minimum Payment Due \$2,282.00	
+ Cash Advances	.00	Daily Periodic Rate .000000% .000000%		Payment Due Date 05/28/02	
+ FINANCE CHARGE:					
On Balances	.00				
+ Late Charge	.00				
= NEW BALANCE	\$3,450.86				

00000000 3582 A400

Unifund/Franks
0009

ACCOUNT NUMBER 4031-1404-0090-8090	BALANCE AS OF 04/28/02 \$3,450.86	PAYMENT DUE DATE MAY 29, 2002	MINIMUM PAYMENT \$2,178.00	AMOUNT ENCLOSED \$
---------------------------------------	--------------------------------------	----------------------------------	-------------------------------	-----------------------

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MESSAGES FROM PROVIDIAN VISA CARD

YOUR PAYMENT IS LATE AND YOUR ACCOUNT IS OVER ITS CREDIT LINE!
Your account may be closed due to nonpayment. To avoid further collection efforts,
please send the past due amount of \$2,074.00, or call us at 1-800-918-9180 today.

Paying just the minimum amount due will not change your overlimit status.
Please send the required funds to ensure your account balance is
within your approved credit limit.

TRANSACTIONS

Post Date	Description	Trans Date	Reference Number	Amount
No Activity This Month				

** AVAILABLE CREDIT

** Your Total Available Credit is \$0.00

*** \$0.00 of your Available Credit can be accessed for Cash Advances.

** The portion of your credit line that can be used for Cash Advances is limited to \$2,679.00.

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

ACCOUNT SUMMARY		STATEMENT DATE		PAYMENT INFORMATION	
		04/28/02			
Previous Balance		Number of Days in Billing Cycle		Account Number 4031 1404 0090 8090	
\$3,450.86		32			
- Credits		Purchase		Credit Line **	
.00		Cash Advance		\$2,679	
- Payments		Average		Available Credit ***	
.00		Daily Balance		\$0.00	
+ Purchases & other Charges		\$0.00		Minimum Payment Due	
.00		\$0.00		\$2,178.00	
+ Cash Advances		ANNUAL PERCENTAGE RATE		Payment Due Date	
.00		0.00%		05/26/02	
+ FINANCE CHARGE:		Daily Periodic Rate			
On Balances		.000000%			
.00					
+ Late Charge					
.00					
= NEW BALANCE					
\$3,450.86					

00000000 3682 A400

Unifund/Franks
0010

ACCOUNT NUMBER 4031-1404-0090-8090	BALANCE AS OF 03/28/02 \$3,450.88	PAYMENT DUE DATE APR 24, 2002	MINIMUM PAYMENT \$2,074.00	AMOUNT ENCLOSED \$
---------------------------------------	---	-------------------------------------	----------------------------------	-----------------------

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Make Checks Payable to
Providian

PROVIDIAN VISA CARD

PROVIDIAN VISA CARD
PO BOX 9539
MANCHESTER NH 03108-9539

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DONALD Q FRANKS
4223 MATTERHORN CT
MONTGOMERY AL 36116-5517

Page 1 of 1
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40311404009080900207400034508600000

Your account is issued by Providian National Bank, Tilton, NH.

DETACH HERE

MESSAGES FROM PROVIDIAN VISA CARD

YOUR PAYMENT IS LATE AND YOUR ACCOUNT IS OVER ITS CREDIT LINE!
Your account may be closed due to nonpayment. To avoid further collection efforts,
please send the past due amount of \$1,970.00, or call us at 1-800-918-9180 today.

Paying just the minimum amount due will not change your overlimit status.
Please send the required funds to ensure your account balance is
within your approved credit limit.

TRANSACTIONS

Post Date	Description	Trans Date	Reference Number	Amount
No Activity This Month				

** AVAILABLE CREDIT

** Your Total Available Credit is \$.00

*** \$0.00 of your Available Credit can be accessed for Cash Advances.

** The portion of your credit line that can be used for Cash Advances is limited to \$2,679.00.

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

ACCOUNT SUMMARY		STATEMENT DATE		PAYMENT INFORMATION	
		03/28/02			
Previous Balance	\$3,450.88	Number of Days in Billing Cycle		29	
- Credits	.00	Purchase		Cash Advance	
- Payments	.00	Average		Account Number 4031 1404 0090 8090	
+ Purchases & other Charges	.00	Daily Balance		\$0.00 \$0.00	
+ Cash Advances	.00	ANNUAL PERCENTAGE RATE		0.00% 0.00%	
+ FINANCE CHARGE:		Daily Periodic Rate		.000000% .000000%	
On Balances	.00			Credit Line ** \$2,679	
+ Late Charge	.00			Available Credit *** \$.00	
= NEW BALANCE	\$3,450.88			Minimum Payment Due \$2,074.00	
				Payment Due Date 04/24/02	

000000000 3682 A400

Unifund/Franks
0011

ACCOUNT NUMBER 4031-1404-0090-8090	BALANCE AS OF 02/27/02 \$3,450.86	PAYMENT DUE DATE MAR 28, 2002	MINIMUM PAYMENT \$1,970.00	AMOUNT ENCLOSED \$
---------------------------------------	--------------------------------------	----------------------------------	-------------------------------	-----------------------

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PROVIDIAN VISA CARD

PROVIDIAN VISA CARD
PO BOX 8539
MANCHESTER NH 03108-9539

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DONALD Q FRANKS
4223 MATTERHORN CT
MONTGOMERY AL 36116-5517

Page 1 of 1
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403114040090809001970000345086000000

Your account is issued by Providian National Bank, Tilton, NH.

DETACH HERE

MESSAGES FROM PROVIDIAN VISA CARD

YOUR PAYMENT IS LATE AND YOUR ACCOUNT IS OVER ITS CREDIT LINE!
Your account may be closed due to nonpayment. To avoid further collection efforts, please send the past due amount of \$1,965.00, or call us at 1-800-818-9180 today.

Paying just the minimum amount due will not change your overlimit status. Please send the required funds to ensure your account balance is within your approved credit limit.

TRANSACTIONS

Post Date	Description	Trans Date	Reference Number	Amount
No Activity This Month				

** AVAILABLE CREDIT

** Your Total Available Credit is \$.00

*** \$0.00 of your Available Credit can be accessed for Cash Advances.

** The portion of your credit line that can be used for Cash Advances is limited to \$2,679.00.

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

ACCOUNT SUMMARY		STATEMENT DATE		02/27/02	PAYMENT INFORMATION	
		Number of Days in Billing Cycle		30		
Previous Balance	\$3,450.86				Account Number 4031 1404 0090 8090	
- Credits	.00			Purchase Cash Advance		
- Payments	.00			Average	Credit Line ** \$2,679	
+ Purchases & other Charges	.00	Daily Balance \$.00		\$.00	Available Credit *** \$.00	
+ Cash Advances	.00	ANNUAL PERCENTAGE RATE 0.00%		0.00%	Minimum Payment Due \$1,970.00	
+ FINANCE CHARGE:		Daily Periodic Rate .000000%		.000000%	Payment Due Date 03/28/02	
On Balances	.00					
+ Late Charge	.00					
= NEW BALANCE	\$3,450.86					

00000000 3682 A151

Unifund/Franks
0012

ACCOUNT NUMBER 4031-1404-0090-8090	BALANCE AS OF 01/28/02 \$3,450.86	PAYMENT DUE DATE FEB 24, 2002	MINIMUM PAYMENT \$1,866.00	AMOUNT ENCLOSED \$
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PROVIDIAN VISA CARD

PROVIDIAN VISA CARD
PO BOX 9539
MANCHESTER NH 03108-9539

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DONALD Q FRANKS
4223 MATTERHORN CT
MONTGOMERY AL 36116-5517

Page 1 of 1
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40311404009080900186600034508600000

Your account is issued by Providian National Bank, Tilton, NH.

DETACH HERE

MESSAGES FROM PROVIDIAN VISA CARD

YOUR PAYMENT IS LATE AND YOUR ACCOUNT IS OVER ITS CREDIT LINE!
Your account may be closed due to nonpayment. To avoid further collection efforts, please send
the past due amount of \$1,782.00, or call us at 1-800-818-8180 today.

Paying just the minimum amount due will not change your overlimit status. Please send the
required funds to ensure your account balance is within your approved credit limit.

TRANSACTIONS

Post Date	Description	Trans Date	Reference Number	Amount
No Activity This Month				

** AVAILABLE CREDIT

** Your Total Available Credit is \$.00

*** \$0.00 of your Available Credit can be accessed for Cash Advances.

** The portion of your credit line that can be used for Cash Advances is limited to \$2,679.00.

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

ACCOUNT SUMMARY		STATEMENT DATE		01/28/02	PAYMENT INFORMATION	
		Number of Days in Billing Cycle		31		
Previous Balance	\$3,450.86				Account Number 4031 1404 0090 8080	
- Credits	.00			Purchase Cash Advances		
- Payments	.00	Average			Credit Line ** \$2,679	
+ Purchases & other Charges	.00	Daily Balance		\$0.00 \$0.00	Available Credit *** \$0.00	
+ Cash Advances	.00	ANNUAL			Minimum Payment Due \$1,866.00	
+ FINANCE CHARGE:		PERCENTAGE RATE		0.00% 0.00%	Payment Due Date 02/24/02	
On Balances	.00					
+ Late Charge	.00	Daily Periodic Rate		.000000% .000000%		
= NEW BALANCE	\$3,450.86					

00000000 3682 A151

Unifund/Franks
0013

ACCOUNT NUMBER 4031-1404-0090-8090	BALANCE AS OF 12/28/01 \$3,450.86	PAYMENT DUE DATE JAN 24, 2002	MINIMUM PAYMENT \$1,762.00	AMOUNT ENCLOSED \$
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PROVIDIAN VISA CARD

PROVIDIAN VISA CARD
PO BOX 9539
MANCHESTER NH 03108-9539

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DONALD Q FRANKS
4223 MATTERHORN CT
MONTGOMERY AL 36116-5517

Page 1 of 1
000000 220

40311404009080900176200034508600000

Your account is issued by Providian National Bank, Tilton, NH.

DETACH HERE

MESSAGES FROM PROVIDIAN VISA CARD

YOUR PAYMENT IS LATE AND YOUR ACCOUNT IS OVER ITS CREDIT LINE!
Your account may be closed due to nonpayment. To avoid further collection efforts, please send the past due amount of \$1,858.00, or call us at 1-800-218-2180 today.

Paying just the minimum amount due will not change your overlimit status. Please send the required funds to ensure your account balance is within your approved credit limit.

TRANSACTIONS

Post Date	Description	Trans Date	Reference Number	Amount
No Activity This Month				

** AVAILABLE CREDIT

** Your Total Available Credit is \$.00

*** \$0.00 of your Available Credit can be accessed for Cash Advances.

** The portion of your credit line that can be used for Cash Advances is limited to \$2,679.00.

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

ACCOUNT SUMMARY		STATEMENT DATE		PAYMENT INFORMATION	
		12/28/01			
Previous Balance		Number of Days in Billing Cycle		Account Number 4031 1404 0090 8090	
- Credits		29			
- Payments		Purchase Cash Advance		Credit Line **	
+ Purchases & other Charges		Average		\$2,679	
+ Cash Advances		Daily Balance		Available Credit ***	
+ FINANCE CHARGE:		\$0.00		\$0.00	
On Balances		ANNUAL PERCENTAGE RATE 0.00%		Minimum Payment Due	
+ Late Charge		0.00%		\$1,762.00	
= NEW BALANCE		Daily Periodic Rate .000000%		Payment Due Date	
\$3,450.86				01/24/02	

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Unifund/Franks
0014

ACCOUNT NUMBER 4031-1404-0090-8090	BALANCE AS OF 11/29/01 \$3,450.86	PAYMENT DUE DATE DEC 24, 2001	MINIMUM PAYMENT \$1,658.00	AMOUNT ENCLOSED \$
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40311404009080900165800034508600000

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YOUR PAYMENT IS LATE AND YOUR ACCOUNT IS OVER ITS CREDIT LINE!
Your account may be closed due to nonpayment. To avoid further collection efforts, please send the past due amount of \$1,658.00, or call us at 1-800-918-9180 today.

Paying just the minimum amount due will not change your overlimit status. Please send the required funds to ensure your account balance is within your approved credit limit.

TRANSACTIONS

Post Date	Description	Trans Date	Reference Number	Amount
No Activity This Month				

** AVAILABLE CREDIT

** Your Total Available Credit is \$0.00

*** \$0.00 of your Available Credit can be accessed for Cash Advances.

** The portion of your credit line that can be used for Cash Advances is limited to \$2,679.00.

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

ACCOUNT SUMMARY		STATEMENT DATE 11/29/01		PAYMENT INFORMATION	
Previous Balance	\$3,450.86	Number of Days In Billing Cycle 31		Account Number 4031 1404 0090 8090	
- Credits	.00	Purchase Cash Advance		Credit Line ** \$2,679	
+ Payments	.00	Average		Available Credit *** \$0.00	
+ Purchases & other Charges	.00	Daily Balance \$0.00 \$0.00		Minimum Payment Due \$1,658.00	
+ Cash Advances	.00	ANNUAL PERCENTAGE RATE 0.00% 0.00%		Payment Due Date 12/24/01	
+ FINANCE CHARGE:		Daily Periodic Rate .000000% .000000%			
On Balances	.00				
+ Late Charge	.00				
= NEW BALANCE	\$3,450.86				

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Unifund/Franks
0015

ACCOUNT NUMBER 4031-1404-0090-8090	BALANCE AS OF 10/29/01 \$3,450.86	PAYMENT DUE DATE NOV 23, 2001	MINIMUM PAYMENT \$1,554.00	AMOUNT ENCLOSED \$
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YOUR PAYMENT IS LATE AND YOUR ACCOUNT IS OVER ITS CREDIT LINE!
Your account may be closed due to nonpayment. To avoid further collection efforts, please send
the past due amount of \$1,450.00, or call us at 1-800-818-9180 today.

Paying just the minimum amount due will not change your overlimit status. Please send the
required funds to ensure your account balance is within your approved credit limit.

TRANSACTIONS

Post Date	Description	Trans Date	Reference Number	Amount
No Activity This Month				

** AVAILABLE CREDIT

** Your Total Available Credit is \$0.00

*** \$0.00 of your Available Credit can be accessed for Cash Advances.

** The portion of your credit line that can be used for Cash Advances is limited to \$2,679.00.

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

ACCOUNT SUMMARY		STATEMENT DATE		PAYMENT INFORMATION	
		10/29/01			
Previous Balance	\$3,450.86	Number of Days in Billing Cycle		32	
- Credits	.00	Purchase		Cash Advance	
- Payments	.00	Average		Account Number 4031 1404 0090 8090	
+ Purchases & other Charges	.00	Daily Balance		\$0.00 \$0.00	
+ Cash Advances	.00	ANNUAL PERCENTAGE RATE		0.00% 0.00%	
+ FINANCE CHARGE:		Daily Periodic Rate		.000000% .000000%	
On Balances	.00			Minimum Payment Due	
+ Late Charge	.00			\$1,554.00	
= NEW BALANCE	\$3,450.86			Payment Due Date	
				11/23/01	

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Unifund / Franks
0016

ACCOUNT NUMBER 4031-1404-0090-8090	BALANCE AS OF 08/27/01 \$3,450.86	PAYMENT DUE DATE OCT 22, 2001	MINIMUM PAYMENT \$1,450.00	AMOUNT ENCLOSED \$
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The recent national tragedy has caused delays in mail service. Please consider mailing your payment early, paying by phone, or making a payment online. Call us at the customer service number shown, or log on at www.providian.com, cardaccess.getsmart.com, or www.paypalcardservices.com.

Your account is past due and must be paid immediately to avoid further credit damage and possible referral of your account for additional collection action.
If you are unable to make your payment immediately, call us at 1-800-918-9180.

Also note that your account is \$771.86 over your \$2,679.00 credit line. While your Account Agreement may require you to pay this overlimit amount, we are giving you the flexibility of paying only \$1,450.00. Paying just this minimum due payment will leave your account in an overlimit status. We encourage you to pay the additional \$771.86 as soon as possible.

TRANSACTIONS

Post Date	Description	Trans Date	Reference Number	Amount
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No Activity This Month

** AVAILABLE CREDIT

** Your Total Available Credit is \$.00

*** \$0.00 of your Available Credit can be accessed for Cash Advances.

** The portion of your credit line that can be used for Cash Advances is limited to \$2,679.00.

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

ACCOUNT SUMMARY		STATEMENT DATE		PAYMENT INFORMATION	
		08/27/01			
Previous Balance	\$3,450.86	Number of Days in Billing Cycle		Account Number 4031 1404 0090 8090	
- Credits	.00	Average		Credit Line **	
- Payments	.00	Purchase Cash Advance		\$2,679	
+ Purchases & other Charges	.00	Daily Balance		Available Credit ***	
+ Cash Advances	.00	\$0.00		\$0.00	
+ FINANCE CHARGE:	.00	ANNUAL PERCENTAGE RATE		Minimum Payment Due	
On Balances	.00	0.00%		\$1,450.00	
+ Late Charge	.00	Daily Periodic Rate		Payment Due Date	
= NEW BALANCE	\$3,450.86	.000000%		10/22/01	

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Unifund/Franks
0017

ACCOUNT NUMBER 4031-1404-0090-8090	BALANCE AS OF 08/30/01 \$3,450.86	PAYMENT DUE DATE SEP 24, 2001	MINIMUM PAYMENT \$1,348.00	AMOUNT ENCLOSED \$
<input type="checkbox"/> Indicate change of address on back				Make Checks Payable to Providian

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Your account is past due and must be paid immediately to avoid further credit damage
 and possible referral of your account for additional collection action.
 If you are unable to make your payment immediately, call us at 1-800-818-8180.

Also note that your account is \$771.88 over your \$2,679.00 credit line. While your Account
 Agreement may require you to pay this overlimit amount, we are giving you the flexibility of paying only
 \$1,348.00. Paying just this minimum due payment will leave your account in an overlimit status.
 We encourage you to pay the additional \$771.88 as soon as possible.

TRANSACTIONS

Post Date	Description	Trans Date	Reference Number	Amount
No Activity This Month				

** AVAILABLE CREDIT

** Your Total Available Credit is \$.00

*** \$0.00 of your Available Credit can be accessed for Cash Advances.

** The portion of your credit line that can be used for Cash Advances is limited to \$2,679.00.

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

ACCOUNT SUMMARY		STATEMENT DATE		PAYMENT INFORMATION	
Previous Balance	\$3,450.86	08/30/01	34	Account Number	4031 1404 0090 8090
- Credits	.00	Number of Days in Billing Cycle		Credit Line **	\$2,679
- Payments	.00	Purchase Cash Advance		Available Credit ***	\$.00
+ Purchases & other Charges	.00	Average		Minimum Payment Due	\$1,348.00
+ Cash Advances	.00	Daily Balance	\$.00	Payment Due Date	09/24/01
+ FINANCE CHARGE:		ANNUAL PERCENTAGE RATE	0.00%		
On Balances	.00	Daily Periodic Rate	.000000%		
+ Late Charge	.00				
= NEW BALANCE	\$3,450.86				

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Unifund/Franks
 0018

ACCOUNT NUMBER 4031-1404-0090-8090	BALANCE AS OF 07/27/01 \$3,450.88	PAYMENT DUE DATE AUG 21, 2001	MINIMUM PAYMENT \$1,242.00	AMOUNT ENCLOSED \$
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If you are unable to make your payment immediately, call us at 1-800-818-8180.

Also note that your account is \$771.88 over your \$2,679.00 credit line. While your Account Agreement may require you to pay this overlimit amount, we are giving you the flexibility of paying only \$1,242.00. Paying just this minimum due payment will leave your account in an overlimit status. We encourage you to pay the additional \$771.88 as soon as possible.

TRANSACTIONS

Post Date	Description	Trans Date	Reference Number	Amount
No Activity This Month				

** AVAILABLE CREDIT

** Your Total Available Credit is \$0.00

*** \$0.00 of your Available Credit can be accessed for Cash Advances.

** The portion of your credit line that can be used for Cash Advances is limited to \$2,679.00.

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

ACCOUNT SUMMARY		STATEMENT DATE 07/27/01		PAYMENT INFORMATION	
Previous Balance	\$3,450.88	Number of Days in Billing Cycle 29		Account Number	4031 1404 0090 8090
- Credits	.00	Purchase Cash Advance		Credit Line **	\$2,679
- Payments	.00	Average		Available Credit ***	\$0.00
+ Purchases & other Charges	.00	Daily Balance	5.00	Minimum Payment Due	\$1,242.00
+ Cash Advances	.00	ANNUAL PERCENTAGE RATE	0.00%	Payment Due Date	08/21/01
+ FINANCE CHARGE:		Daily Periodic Rate	.000000%		
On Balances	.00				
+ Late Charge	.00				
= NEW BALANCE	\$3,450.88				

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Unifund / Franks
0019

ACCOUNT NUMBER	BALANCE AS OF 06/28/01	PAYMENT DUE DATE	MINIMUM PAYMENT	AMOUNT ENCLOSED
4031-1404-0090-8090	\$3,450.86	JUL 23, 2001	\$1,138.00	\$

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Your account is past due and must be paid immediately to avoid further credit damage and possible referral of your account for additional collection action.
If you are unable to make your payment immediately, call us at 1-800-918-9160.

Also note that your account is \$771.86 over your \$2,679.00 credit line. While your Account Agreement may require you to pay this overlimit amount, we are giving you the flexibility of paying only \$1,138.00. Paying just this minimum due payment will leave your account in an overlimit status. We encourage you to pay the additional \$771.86 as soon as possible.

TRANSACTIONS

Post Date	Description	Trans Date	Reference Number	Amount
No Activity This Month				

** AVAILABLE CREDIT

** Your Total Available Credit is \$0.00

*** \$0.00 of your Available Credit can be accessed for Cash Advances.

** The portion of your credit line that can be used for Cash Advances is limited to \$2,679.00.

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

ACCOUNT SUMMARY		STATEMENT DATE		PAYMENT INFORMATION	
Previous Balance	\$3,450.86	06/28/01	29	Account Number	4031 1404 0090 8080
+ Credits	.00	Number of Days in Billing Cycle		Credit Line **	\$2,679
- Payments	.00	Average Purchase Cash Advance		Available Credit ***	\$0.00
+ Purchases & other Charges	.00	Daily Balance	\$0.00 \$0.00	Minimum Payment Due	\$1,138.00
+ Cash Advances	.00	ANNUAL PERCENTAGE RATE	0.00% 0.00%	Payment Due Date	07/23/01
+ FINANCE CHARGE:		Daily Periodic Rate	.000000% .000000%		
On Balances	.00				
+ Late Charge	.00				
= NEW BALANCE	\$3,450.86				

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Unifund/Franks
0020

ACCOUNT NUMBER 4031-1404-0090-8090	BALANCE AS OF 05/30/01 \$3,450.88	PAYMENT DUE DATE JUN 24, 2001	MINIMUM PAYMENT \$1,034.00	AMOUNT ENCLOSED \$
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Your account is past due and must be paid immediately to avoid further credit damage and possible referral of your account for additional collection action.
If you are unable to make your payment immediately, call us at 1-800-918-9100.

Also note that your account is \$771.88 over your \$2,679.00 credit line. While your Account Agreement may require you to pay this overlimit amount, we are giving you the flexibility of paying only \$1,034.00. Paying just this minimum due payment will leave your account in an overlimit status. We encourage you to pay the additional \$771.88 as soon as possible.

TRANSACTIONS

Post Date	Description	Trans Date	Reference Number	Amount
No Activity This Month				

** AVAILABLE CREDIT

** Your Total Available Credit is \$0.00

*** \$0.00 of your Available Credit can be accessed for Cash Advances.

** The portion of your credit line that can be used for Cash Advances is limited to \$2,679.00.

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

ACCOUNT SUMMARY		STATEMENT DATE 05/30/01		PAYMENT INFORMATION	
Previous Balance	\$3,450.88	Number of Days in Billing Cycle 33		Account Number	4031 1404 0090 8090
- Credits	.00	Purchase Cash Advance		Credit Line **	\$2,679
+ Payments	.00	Average Daily Balance \$0.00 \$0.00		Available Credit ***	\$0.00
+ Purchases & other Charges	.00	ANNUAL PERCENTAGE RATE 0.00% 0.00%		Minimum Payment Due	\$1,034.00
+ Cash Advances	.00	Daily Periodic Rate .000000% .000000%		Payment Due Date	06/24/01
+ FINANCE CHARGE:					
On Balances	.00				
+ Late Charge	.00				
= NEW BALANCE	\$3,450.88				

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Unifund/Franks
0021

ACCOUNT NUMBER	BALANCE AS OF 04/27/01	PAYMENT DUE DATE	MINIMUM PAYMENT	AMOUNT ENCLOSED
4031-1404-0090-8090	\$3,450.88	MAY 22, 2001	\$930.00	\$
<input type="checkbox"/> Indicate change of address on back				Make Checks Payable to Providian

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Your account is past due and must be paid immediately to avoid further credit damage
and possible referral of your account for additional collection action.
If you are unable to make your payment immediately, call us at 1-800-818-8180.

Also note that your account is \$771.88 over your \$2,679.00 credit line. While your Account
Agreement may require you to pay this overlimit amount, we are giving you the flexibility of paying only
\$930.00. Paying just this minimum due payment will leave your account in an overlimit status.
We encourage you to pay the additional \$771.88 as soon as possible.

TRANSACTIONS

Post Date	Description	Trans Date	Reference Number	Amount
No Activity This Month				

** AVAILABLE CREDIT

** Your Total Available Credit is \$.00

*** \$0.00 of your Available Credit can be accessed for Cash Advances.

** The portion of your credit line that can be used for Cash Advances is limited to \$2,679.00.

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

ACCOUNT SUMMARY		STATEMENT DATE		PAYMENT INFORMATION	
		04/27/01			
Previous Balance	\$3,450.88	Number of Days in Billing Cycle		30	
- Credits	.00	Purchase		Cash Advance	
- Payments	.00	Average		Account Number 4031 1404 0090 8090	
+ Purchases & other Charges	.00	Daily Balance		\$0.00 \$0.00	
+ Cash Advances	.00	ANNUAL PERCENTAGE RATE		0.00% 0.00%	
+ FINANCE CHARGE:		Daily Periodic Rate		.000000% .000000%	
On Balances	.00			Credit Line ** \$2,679	
+ Late Charge	.00			Available Credit *** \$.00	
= NEW BALANCE	\$3,450.88			Minimum Payment Due \$930.00	
				Payment Due Date 05/22/01	

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Unifund/Franks
0022

ACCOUNT NUMBER	BALANCE AS OF 03/28/01	PAYMENT DUE DATE	MINIMUM PAYMENT	AMOUNT ENCLOSED
4031-1404-0090-8090	\$3,450.86	APR 22, 2001	\$226.00	\$
<input type="checkbox"/> Indicate change of address on back				Make Checks Payable to Providian

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 and possible referral of your account for additional collection action.
 If you are unable to make your payment immediately, call us at 1-800-818-9180.

Also note that your account is \$771.86 over your \$2,679.00 credit line. While your Account
 Agreement may require you to pay this overlimit amount, we are giving you the flexibility of paying only
 \$226.00. Paying just this minimum due payment will leave your account in an overlimit status.
 We encourage you to pay the additional \$771.86 as soon as possible.

TRANSACTIONS

Post Date	Description	Trans Date	Reference Number	Amount
No Activity This Month				

** AVAILABLE CREDIT

** Your Total Available Credit is \$0.00

*** \$0.00 of your Available Credit can be accessed for Cash Advances.

** The portion of your credit line that can be used for Cash Advances is limited to \$2,679.00.

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

ACCOUNT SUMMARY		STATEMENT DATE 03/28/01		PAYMENT INFORMATION	
Previous Balance	\$3,450.86	Number of Days in Billing Cycle 13		Account Number	4031 1404 0090 8090
- Credits	.00	Purchase Cash Advance		Credit Line **	\$2,679
- Payments	.00	Average		Available Credit ***	\$0.00
+ Purchases & other Charges	.00	Daily Balance	\$0.00 \$0.00	Minimum Payment Due	\$226.00
+ Cash Advances	.00	ANNUAL PERCENTAGE RATE	0.00% 0.00%	Payment Due Date	04/22/01
+ FINANCE CHARGE:		Daily Periodic Rate	.000000% .000000%		
On Balances	.00				
* Late Charge	.00				
= NEW BALANCE	\$3,450.86				

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Unifund/Franks
 0023

ACCOUNT NUMBER	BALANCE AS OF 03/15/01	PAYMENT DUE DATE	MINIMUM PAYMENT	AMOUNT ENCLOSED
4031-1404-0090-8090	\$3,450.86	APR 04, 2001	\$722.00	\$
<input type="checkbox"/> Indicate change of address on back				Make Checks Payable to Providian

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If you are unable to make your payment immediately, call us at 1-800-818-9180.

Also note that your account is \$771.88 over your \$2,679.00 credit line. While your Account Agreement may require you to pay this overlimit amount, we are giving you the flexibility of paying only \$722.00. Paying just this minimum due payment will leave your account in an overlimit status. We encourage you to pay the additional \$771.88 as soon as possible.

PLEASE SEE ENCLOSED IMPORTANT LEGAL NOTICE CONCERNING THE ADDITION OF AN ARBITRATION PROVISION TO YOUR ACCOUNT AGREEMENT. PLEASE READ IT CAREFULLY AND KEEP IT FOR YOUR RECORDS.

TRANSACTIONS

Post Date	Description	Trans Date	Reference Number	Amount
03-15	OVERLIMIT FEE	03-15		0000 29.00
03-15	LATE PAYMENT CHARGE	03-15		0000 29.00

** AVAILABLE CREDIT

** Your Total Available Credit is \$0.00

*** \$0.00 of your Available Credit can be accessed for Cash Advances.

** The portion of your credit line that can be used for Cash Advances is limited to \$2,679.00.

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

ACCOUNT SUMMARY		STATEMENT DATE		PAYMENT INFORMATION	
		03/15/01			
Previous Balance	\$3,328.62	Number of Days in Billing Cycle		Account Number 4031 1404 0090 8090	
- Credits	.00	Purchase Cash Advance		Credit Line **	
- Payments	.00	Average		Available Credit ***	
+ Purchases & other Charges	29.00	Daily Balance		Minimum Payment Due	
+ Cash Advances	.00	\$3,105.78		Payment Due Date	
+ FINANCE CHARGE:		\$252.54			
On Balances	66.24	ANNUAL PERCENTAGE RATE 23.99%			
+ Late Charge	29.00	23.99%			
(Previous Due Date 03-10)		Daily Periodic Rate .065726%			
= NEW BALANCE	\$3,450.86	.065726%			

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Unifund/Franks
0024

ACCOUNT NUMBER 4031-1404-0090-8090	BALANCE AS OF 03/10/01 \$2,679.00	PAYMENT DUE DATE 03/10/01	MINIMUM PAYMENT \$619.00	AMOUNT ENCLOSED \$
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Your account is past due and must be paid immediately to avoid further credit damage and possible referral of your account for additional collection action.

If you are unable to make your payment immediately, call us at 1-800-918-9180.

Also note that your account is \$847.82 over your \$2,679.00 credit line. While your Account Agreement may require you to pay this overlimit amount, we are giving you the flexibility of paying only \$619.00. Paying just this minimum due payment will leave your account in an overlimit status. We encourage you to pay the additional \$847.82 as soon as possible.

TRANSACTIONS

Post Date	Description	Trans Date	Reference Number	Amount
02-18	OVERLIMIT FEE	02-13	0000	29.00
02-18	LATE PAYMENT CHARGE	02-13	0000	29.00

**** AVAILABLE CREDIT**

** Your Total Available Credit is \$0.00

*** \$0.00 of your Available Credit can be accessed for Cash Advances.

** The portion of your credit line that can be used for Cash Advances is limited to \$2,679.00.

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

ACCOUNT SUMMARY		STATEMENT DATE		PAYMENT INFORMATION	
Previous Balance \$3,209.02		02/13/01		Account Number 4031 1404 0090 8090	
- Credits .00		Number of Days in Billing Cycle 28		Credit Line ** \$2,679	
- Payments .00		Average Purchase Cash Advance		Available Credit *** \$0.00	
+ Purchases & other Charges 29.00		Daily Balance \$2,930.75 \$247.77		Minimum Payment Due \$619.00	
+ Cash Advances .00		ANNUAL PERCENTAGE RATE 23.99% 23.99%		Payment Due Date 03/10/01	
+ FINANCE CHARGE: On Balances 59.60		Daily Periodic Rate .065726% .065726%			
+ Late Charge 29.00					
(Previous Due Date 02-10)					
= NEW BALANCE \$3,326.62					

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Unifund/Franks
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ACCOUNT NUMBER	BALANCE AS OF 01/16/01	PAYMENT DUE DATE	MINIMUM PAYMENT	AMOUNT ENCLOSED
4031-1404-0090-8090				\$
<input type="checkbox"/> Indicate change of address on back				Make Checks Payable to Providian

PROVIDIAN VISA CARD



PROVIDIAN VISA CARD
PO BOX 9539
MANCHESTER NH 03108-9539

Please be sure
this address appears
in the window.



DONALD G FRANKS
4223 MATTERHORN CT
MONTGOMERY AL 36116-5517

Page 1 of 1
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4031140400908090000520000320902000000

MESSAGES FROM PROVIDIAN VISA CARD

DETACH HERE

Get up-to-date account information anytime you want at www.providianonline.com. You can also pay your bill, sign up for My Toolkit (sm) e-wallet or enjoy shopping discounts!

Your account is past due and must be paid immediately to avoid further credit damage and possible referral of your account for additional collection action.

If you are unable to make your payment immediately, call us at 1-800-918-9160.

Also note that your account is \$590.02 over your \$2,679.00 credit line. While your Account Agreement may require you to pay this overlimit amount, we are giving you the flexibility of paying only \$520.00. Paying just this minimum due payment will leave your account in an overlimit status. We encourage you to pay the additional \$590.02 as soon as possible.

TRANSACTIONS

Post Date	Description	Trans Date	Reference Number	Amount
01-16	OVERLIMIT FEE	01-16		0000 29.00
01-16	LATE PAYMENT CHARGE	01-16		0000 29.00

** AVAILABLE CREDIT

** Your Total Available Credit is \$.00

*** \$0.00 of your Available Credit can be accessed for Cash Advances.

** The portion of your credit line that can be used for Cash Advances is limited to \$2,679.00.

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

ACCOUNT SUMMARY		STATEMENT DATE		PAYMENT INFORMATION	
Previous Balance		01/16/01			
- Credits		Number of Days in Billing Cycle		33	
- Payments		Purchase		Cash Advance	
+ Purchases & other Charges		Average		Account Number 4031 1404 0090 8090	
+ Cash Advances		Daily Balance		Credit Line **	
+ FINANCE CHARGE:		\$2,673.84		\$2,679	
On Balances		ANNUAL PERCENTAGE RATE 23.99%		Available Credit ***	
Late Charge		23.99%		\$.00	
(Previous Due Date 01-08)		Daily Periodic Rate .065728%		Minimum Payment Due	
= NEW BALANCE		.065728%		\$520.00	
\$3,205.02				Payment Due Date	
				02/10/01	

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Unifund/Franks
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ACCOUNT NUMBER	BALANCE AS OF 12/14/00	PAYMENT DUE DATE	MINIMUM PAYMENT	AMOUNT ENCLOSED
4031-1404-0090-8090				\$
<input type="checkbox"/> Indicate change of address on back				Make Checks Payable to Providian

PROVIDIAN VISA CARD

PROVIDIAN VISA CARD
 PO BOX 9939
 MANCHESTER NH 03108-9939

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DONALD Q FRANKS
 4223 MATTERHORN CT
 MONTGOMERY AL 36116-8517

Page 1 of 1
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403114040090809000042500030834200000

MESSAGES FROM PROVIDIAN VISA CARD

DETACH HERE

Your account is past due and must be paid immediately to avoid further credit damage
 and possible referral of your account for additional collection action.
 If you are unable to make your payment immediately, call us at 1-800-918-9180.

Also note that your account is \$404.42 over your \$2,679.00 credit line. While your Account
 Agreement may require you to pay this overlimit amount, we are giving you the flexibility of paying only
 \$425.00. Paying just this minimum due payment will leave your account in an overlimit status.
 We encourage you to pay the additional \$404.42 as soon as possible.

TRANSACTIONS

Post Date	Description	Trans Date	Reference Number	Amount
12-14	OVERLIMIT FEE	12-14		0000 29.00
12-14	LATE PAYMENT CHARGE	12-14		0000 29.00

**** AVAILABLE CREDIT**

** Your Total Available Credit is \$0.00

** \$0.00 of your Available Credit can be accessed for Cash Advances.

** The portion of your credit line that can be used for Cash Advances is limited to \$2,679.00.

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

ACCOUNT SUMMARY		STATEMENT DATE		12/14/00	PAYMENT INFORMATION	
		Number of Days in Billing Cycle		29		
Previous Balance	\$2,968.30				Account Number 4031 1404 0090 8090	
- Credits	.00			Purchase Cash Advance		
- Payments	.00	Average			Credit Line **	
+ Purchases & other Charges	29.00	Daily Balance		\$2,758.88	\$257.98	\$2,679
+ Cash Advances	.00	ANNUAL PERCENTAGE RATE		23.99%	23.99%	Available Credit ***
+ FINANCE CHARGE:						\$0.00
On Balances	57.12	Daily Periodic Rate		.065726%	.065726%	Minimum Payment Due
+ Late Charge	29.00					\$425.00
(Previous Due Date 12-10)						Payment Due Date
= NEW BALANCE	\$3,083.42					01/08/01

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ACCOUNT NUMBER 4031-1404-0090-8090	BALANCE AS OF 12/14/00 \$425.00	PAYMENT DUE DATE 01/08/01	MINIMUM PAYMENT \$23.96	AMOUNT ENCLOSED \$
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☐ Indicate change of address on back

PROVIDIAN VISA CARD

Make Checks Payable to Providian

PROVIDIAN VISA CARD
PO BOX 8538
MANCHESTER NH 03108-5538

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DONALD Q FRANKS
4223 MATTERHORN CT
MONTGOMERY AL 36116-5517

Page 1 of 1
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MESSAGES FROM PROVIDIAN VISA CARD

DETACH HERE

Your account is past due and must be paid immediately to avoid further credit damage and possible referral of your account for additional collection action.
If you are unable to make your payment immediately, call us at 1-800-818-9180.

Also note that your account is \$404.42 over your \$2,679.00 credit line. While your Account Agreement may require you to pay this overlimit amount, we are giving you the flexibility of paying only \$425.00. Paying just this minimum due payment will leave your account in an overlimit status. We encourage you to pay the additional \$404.42 as soon as possible.

TRANSACTIONS

Post Date	Description	Trans Date	Reference Number	Amount
12-14	OVERLIMIT FEE	12-14		0000 29.00
12-14	LATE PAYMENT CHARGE	12-14		0000 29.00

**** AVAILABLE CREDIT**

** Your Total Available Credit is \$.00

*** \$0.00 of your Available Credit can be accessed for Cash Advances.

** The portion of your credit line that can be used for Cash Advances is limited to \$2,679.00.

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

ACCOUNT SUMMARY		STATEMENT DATE 12/14/00		PAYMENT INFORMATION	
Previous Balance	\$2,968.30	Number of Days in Billing Cycle	29	Account Number	4031 1404 0090 8090
- Credits	.00	Average Purchase	Cash Advance	Credit Line **	\$2,679
- Payments	.00	Daily Balance	\$2,758.86	Available Credit ***	\$.00
+ Purchases & other Charges	29.00	ANNUAL PERCENTAGE RATE	23.99%	Minimum Payment Due	\$425.00
+ Cash Advances	.00	Daily Periodic Rate	.065726%	Payment Due Date	01/08/01
+ FINANCE CHARGE:					
On Balances	57.12				
+ Late Charge	29.00				
(Previous Due Date 12-10)					
= NEW BALANCE	\$3,083.42				

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ACCOUNT NUMBER	PAYMENT DUE DATE	MINIMUM PAYMENT	AMOUNT ENCLOSED
4031-1404-0090-8090	NOVEMBER 07, 2006	\$245.00	\$
<input type="checkbox"/> Indicate change of address on back			Make Checks Payable to Providian

PROVIDIAN VISA CARD


PROVIDIAN VISA CARD
 PO BOX 8538
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 DONALD Q FRANKS
 4223 MATTERHORN CT
 MONTGOMERY AL 36116-5517

Page 1 of 1
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MESSAGES FROM PROVIDIAN VISA CARD

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Visit the Cardmember Center at www.providianonline.com- you can view your account information, make a payment, or take advantage of money-saving discounts.

Your payment due includes a past due amount that must be paid immediately. If you have already sent a payment for the above amount, thank you. If you need to discuss your payment, call us at 1-800-918-9180.

Also note that your account is \$168.88 over your \$2,679.00 credit line. While your Account Agreement may require you to pay this overlimit amount, we are giving you the flexibility of paying only \$245.00. Paying just this minimum due payment will leave your account in an overlimit status. We encourage you to pay the additional \$168.88 as soon as possible.

TRANSACTIONS

Post Date	Description	Trans Date	Reference Number	Amount
10-13	OVERLIMIT FEE	10-13		0000 29.00
10-13	LATE PAYMENT CHARGE	10-13		0000 29.00

**** AVAILABLE CREDIT**

** Your Total Available Credit is \$0.00

*** \$0.00 of your Available Credit can be accessed for Cash Advances.

** The portion of your credit line that can be used for Cash Advances is limited to \$2,679.00.

FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

ACCOUNT SUMMARY		STATEMENT DATE		10/12/00		PAYMENT INFORMATION	
Previous Balance		Number of Days in Billing Cycle		30		Account Number 4031 1404 0090 8090	
- Credits	.00	Purchase Cash Advance				Credit Line **	
- Payments	.00	Average				\$2,679	
+ Purchases & other Charges	29.00	Daily Balance		\$2,534.05		Available Credit ***	
+ Cash Advances	.00	ANNUAL PERCENTAGE RATE		23.99%		Minimum Payment Due	
+ FINANCE CHARGE:		Daily Periodic Rate		.065726%		Payment Due Date	
On Balances	54.47					11/07/00	
+ Late Charge	29.00						
(Previous Due Date 10-08)							
= NEW BALANCE	\$2,847.86						

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Unifund/Franks
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ACCOUNT NUMBER 4031-1404-0090-8090	PAYMENT DUE DATE SEPTEMBER 08 2000	MINIMUM PAYMENT \$4.00	AMOUNT ENCLOSED \$
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MANCHESTER NH 03108-9539

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Page 1 of 1
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DONALD Q FRANKS
4223 MATTERHORN CT
MONTGOMERY AL 36116-5517

40311404009080900007900026205400000

TRANSACTIONS					DETACH HERE
Post Date	Description	Trans Date	Reference Number	Amount	
07-24	PAYMENT RECEIVED -- THANK YOU	07-24	74168510204650774700166 0000	136.00	PY
08-07	AAPES MAXWELL SERV STA MAXWELL AFB AL	08-03	24275300217328217246885 9399	7.99	
08-09	CASH ADVANCE FROM ATM - MAX FCU/560 CHENNAULT CIR MAXWELL AFB AL	08-08	74301830221662495231814 4011	60.00	
08-10	RITE AID 7074 MARCO MONTGOMERY AL	08-08	24435650222025070742222 9912	32.98	
08-11	BIG LOTS #0081 0008185 MONTGOMERY AL		74599000223916619926274 5310	81.00	CR
08-11	BIG LOTS #0081 0008185 MONTGOMERY AL	08-09	24599000223916619928911 5310	40.00	
08-11	BIG LOTS #0081 0008185 MONTGOMERY AL	08-09	24599000223916619919118 5310	81.00	
08-14	AAPES MAXWELL MAIN STORE MAXWELL AFB AL	08-10	24275300224328224983897 9399	50.55	

**** AVAILABLE CREDIT**

** Your Total Available Credit is \$58.46

*** \$58.46 of your Available Credit can be accessed for Cash Advances.

** The portion of your credit line that can be used for Cash Advances is limited to \$2,679.00.

ACCOUNT SUMMARY		STATEMENT DATE		08/14/00	PAYMENT INFORMATION	
Previous Balance		Number of Days in Billing Cycle		32	Account Number 4031 1404 0090 8090	
+ Credits	\$1.00	Purchase		Cash Advance	Credit Line **	
+ Payments	136.00	Average			\$2,679	
+ Purchases & other Charges	212.32	Daily Balance		\$2,305.64	Available Credit ***	
+ Cash Advances	60.00	ANNUAL PERCENTAGE RATE		23.99%	Minimum Payment Due	
+ FINANCE CHARGE:		Daily Periodic Rate		.065726%	Payment Due Date	
On Balances	\$2.27	ANNUAL PERCENTAGE RATE		this billing cycle		
Cash Adv Fee	3.00			26.69%		
+ Late Charge	.00					
= NEW BALANCE	\$2,620.54					

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FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

Unifund/Franks
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ACCOUNT NUMBER	PAYMENT DUE DATE	MINIMUM PAYMENT	AMOUNT ENCLOSED
4031-1404-0090-8090	07/13/00	\$136.07	\$

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MANCHESTER NH 03108-8538

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DONALD Q FRANKS
4223 MATTERHORN CT
MONTGOMERY AL 36116-5517

Page 1 of 2
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MESSAGES FROM PROVIDIAN VISA CARD

DETACH HERE

YOUR MINIMUM PAYMENT INCLUDES ANY PAST DUE AMOUNTS. PLEASE SEND THIS AMOUNT IMMEDIATELY. IF YOU HAVE ALREADY SENT A PAYMENT FOR THE ABOVE AMOUNT, THANK YOU. YOUR ACCOUNT IS CURRENTLY \$30.35 OVER YOUR APPROVED CREDIT LINE. YOUR MINIMUM PAYMENT DOES NOT INCLUDE YOUR OVERLIMIT AMOUNT. WE ENCOURAGE YOU TO PAY THE OVERLIMIT AMOUNT TO HELP BRING YOUR ACCOUNT BACK INTO GOOD STANDING AND TO AVOID AN OVERLIMIT FEE ON YOUR NEXT STATEMENT.

TRANSACTIONS

Post Date	Description	Trans Date	Reference Number	Amount
06-19	BLOCKBUSTER VIDEO PROMENADE CTR AL	06-15	24435140170024052007088 7841	4.81
06-19	PMH SUPERCENTER 882 MONTGOMERY S AL	06-18	24226380170360577218677 5411	19.52
06-28	STEIN HART #35 MONTGOMERY AL	06-20	24610430173041698037898 5510	31.27
06-26	HELL NO. 50156800043 MONTGOMERY AL	06-24	24299100176041597197003 5541	3.00
06-26	CHEVRON GOVERNOR HOUSE C MONTGOMERY AL	06-25	24625120177400653680538 5541	4.88
06-26	RACETRAC #200 MONTGOMERY AL	06-25	24610430177023306000027 5541	28.61
06-26	BRUNO'S #87 MONTGOMERY AL	06-24	24455010176017876652325 5411	29.89
06-26	STEIN HART #35 MONTGOMERY AL	06-24	24610430177041696093790 5510	34.50
06-27	BRUNO'S #87 MONTGOMERY AL	06-24	24455010176017976128968 5411	28.93
06-27	WINN DIXIE #449 891 MONTGOMERY AL	06-25	24361400178000161842581 5411	29.00
06-28	TEXACO INC 22601883001 MONTGOMERY AL	06-25	24897390179352674800090 5541	5.58
06-28	AAPER MAXWELL SERV STA MAXWELL AFB AL	06-26	24275580179328179025012 9399	22.11
06-28	EXXON POS 75 50611466 MONTGOMERY AL	06-26	24164050178146440255282 5541	30.46
06-30	CHEVRON GOVERNOR HOUSE C MONTGOMERY AL	06-29	24625120181400674443902 5541	36.63
07-03	RITE AID 7071 HARDO MONTGOMERY AL	06-28	24438650182025070711829 5912	28.39
07-06	DIPLOMAT INN MONTGOMERY AL	07-06	24661000187120035010041 7011	34.24
07-13	LATE PAYMENT CHARGE	07-13		29.00

Continued on Next Page

ACCOUNT SUMMARY		STATEMENT DATE		PAYMENT INFORMATION	
Previous Balance		07/13/00		Account Number 4031 1404 0080 8080	
+ Credits		29		Credit Line **	
- Payments		Purchase Cash Advance		\$2,479	
+ Purchases & other Charges		Average		Available Credit ***	
371.32		Daily Balance		\$5.00	
+ Cash Advances		\$2,139.35		Minimum Payment Due	
.00		\$184.07		\$128.00	
+ FINANCE CHARGE:		ANNUAL PERCENTAGE RATE 23.99%		Payment Due Date	
On Balances		23.99%		08/07/00	
44.29		Daily Periodic Rate .065726%			
+ Late Charge		.065726%			
(Previous Due Date 07-09)					
29.00					
= NEW BALANCE					
\$2,509.85					

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FOR BILLING ERRORS AND IMPORTANT INFORMATION, SEE REVERSE SIDE.

Unifund / Franks
0031

ACCOUNT NUMBER	PAYMENT DUE DATE	MINIMUM PAYMENT	AMOUNT ENCLOSED
4031-1404-0090-8090			\$
<input type="checkbox"/> Indicate change of address on back			Make Checks Payable to Providian

PROVIDIAN VISA CARD

PROVIDIAN PROCESSING SERVICES
 PO BOX 9539
 MANCHESTER NH 03108-9539

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Page 2 of 2

DONALD Q FRANKS
 4225 MATTERHORN CT
 MONTGOMERY AL 36116-5517

40311404009080900013600025099500000

DETACH HERE

** **AVAILABLE CREDIT**

** Your Total Available Credit is \$0.00

*** \$0.00 of your Available Credit can be accessed for Cash Advances.

** The portion of your credit line that can be used for Cash Advances is limited to \$2,479.00.

Exhibit 5

STATE OF Ohio

COUNTY OF Hamilton

AFFIDAVIT IN SUPPORT OF COMPLAINT

BEFORE ME, the undersigned Notary Public, authorized by law to administer oaths, personally appeared the undersigned who, after being first duly sworn, says:

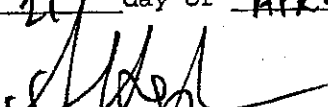
1. I am the authorized agent of Unifund CCR Partners which is a corporation organized and existing under the laws of the State of Ohio.
2. Affiant is at least 18 years of age and competent to testify. Affiant has personal knowledge of the facts set forth herein.
3. There is justly due and owing by the Defendant(s), Donald Q Franks, account number 4031140400908090, to the Plaintiff the sum of 4,652.99 and interest.
4. That the Defendant(s) used or authorized use of a credit card for the purchases of goods and/or services and/or cash advances which use bound the Defendant(s) to the credit card terms and conditions.
5. That the Plaintiff has credited any payments received from the Defendant(s) on this account to the balance owed, and the amounts above stated reflect any payments made to date.
6. Plaintiff and/or its predecessor(s) in interest stated an account to Defendant(s) by sending monthly statements to the Defendant(s), thereby constituting a written account stated.
7. Affiant has personal knowledge of the mailing procedures of UNIFUND CCR PARTNERS, and testifies that the statement(s) sent to the Defendant(s) were properly addressed and mailed to the Defendant(s) with sufficient postage, and not returned.
8. That the Plaintiff keeps regular books of account and that the keeping of said books of account is in the charge of/or under the supervision of the affiant. The entries in said books of account are made in the ordinary course of business.
9. To the best of my knowledge the Defendant(s) is/are not now in the military service, as defined in the Soldier's and Sailor's Civil Relief Act of 1940 with amendments, nor has been in such service within thirty days hereof.

I do solemnly declare and affirm under the penalties of perjury that the matters set forth above are true and correct to the best of my knowledge.


AFFIANT

Angela Freckman

Sworn to and subscribed to before me this
21 day of APRIL, 2006


 Notary Public

Acct No: 4031140400908090
 FWD File: 4031140400908090
 Z&S File: 06-11390-0

AF2

Exhibit 6

Search completed

Records: 1 to 10

SEARCH: Street: 4223 MATTERHORN CT; MONTGOMERY State: al

Full Name

SSN

Address

DONALD FRANK

4223 MATTERHORN CT
MONTGOMERY AL 36116-5517
May 05 - Aug 07DONALD O FRANKS
DOB: 6/19/50 (57)4223 MATTERHORN CT
MONTGOMERY AL 36116-5517
Mar 92 - Oct 07MARCHANDA FRANK
MARCHANDA L FRANKS
MARCLAWDA FRANKS
DOB: 2/19/47 (60)
DOB: 2/13/1947 (60)4223 MATTERHORN CT
MONTGOMERY AL 36116-5517
Mar 92 - Dec 04

MARCHETTA L FRANKS

4223 MATTERHORN CT
MONTGOMERY AL 36116-5517
May 97IMOGENE A ALDRIDGE
IMORGENE ALDRIDGE
DOB: 4/24/1930 (65)4223 MATTERHORN CT
MONTGOMERY AL 36116-5517
Apr 85 - Dec 91






DOHI T FRANKS

4223 MATTERHORN CT
MONTGOMERY AL 36116-5517
Apr 05 - Oct 07EVALINA TRACY FELICIANO
EVALINA TRACY FELICIANO
DOB: 8/19/41 (66)
DOB: 8/28/1941 (66)4223 MATTERHORN CT
MONTGOMERY AL 36116-5517
Jan 98 - Mar 03

FRANKS MARCHANDA

4223 MATTERHORN CT
MONTGOMERY AL 36116-5517

Relatives For: DONALD Q FRANKS 587-18-3866

All	Full Name	SSN	Address	Phone Information
 COPY	MARCLAWDA FRANKS	124-36-XXXX	4223 MATTERHORN CT MONTGOMERY AL 36116-5517	(334) 356-9530 FRANK DONALD
 COPY	MARCHETTA L FRANKS	Mar 92 - Dec 04	4223 MATTERHORN CT MONTGOMERY AL 36116-5517	(334) 284-0398
 COPY	MAGGIE M FRANKS DOB: 10/30/1912 (88)	427-44-XXXX	4600 SAND RD STEENS MS 39766-9752	(662) 329-4071 FRANKS MAGGIE
 COPY	DONI T FRANKS	421-35-XXXX	4223 MATTERHORN CT MONTGOMERY AL 36116-5517	(334) 356-9530 FRANK DONALD
	Export to Excel	Apr 05 - Oct 07		Records: 1 to 4 of 4

Search completed

Records: 1 to 7

SEARCH: SSN: 124364305

Full Name	SSN	Address
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MARCHAIDA FRAIK	124-36-4305	4223 MATTERHORN CT
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MARCHAIDA L FRAIK'S		MONTGOMERY AL 36116-5517
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MARCLAWDA FRAIKS		Mar 92 - Dec 04
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DOB: 2/1947 (60)		
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DOB: 2/13/1947 (60)		
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MARCHAIDA FRAIK	124-36-4305	3649 WOODLEY RD APT 12
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MARCHAIDA FRAIKS		MONTGOMERY AL 36116-3865
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		Oct 02 - Oct 07
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MARCHAIDA FRAIK	124-36-4305	MAXWELL HFB
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MARCHAIDA FRAIKS		MONTGOMERY AL 36116
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DOB: 2/1947 (60)		Nov 96
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DOB: 2/13/1947 (60)		
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MARCHAIDA L FRAIKS JR	124-36-4305	1015 MULZER BLVD # A
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DOB: 2/13/1947 (60)		MONTGOMERY AL 36113-1503
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		Dec 91
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MARCHAIDA FRAIK	124-36-4305	1015A MULZER BLVD
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MARCHAIDA FRAIKS		MONTGOMERY AL 36113-1503
------------------	--	--------------------------

DOB: 2/1947 (60)		Dec 91
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DOB: 2/13/1947 (60)		
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MARCHAIDA FRAIKS	124-36-4305	1300 E SOUTH BLVD
------------------	-------------	-------------------

DOB: 2/13/1947 (60)		MONTGOMERY AL 36116-2318
---------------------	--	--------------------------

		Dec 90
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MARCHAIDA FRAIKS	124-36-4305	22 STARLIFTER CIR
------------------	-------------	-------------------

DOB: 2/13/1947 (60)		SAN BERNARDINO CA 92410-0905
---------------------	--	------------------------------

		Apr 84 - Dec 90
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R

SEARCH: SSN: 587183866

Full Name

SSN

Address

DONALD Q FRAIKS
DOB: 6/1950 (57)

587-18-3866

✓ 4223 MATTERHORN CT
MONTGOMERY AL 36116-5517
Mar 92 - Oct 07

We Also Found: ☐ Property Records

Purchase
Results

DONALD FRAIKS

587-18-3866

3649 WOODLEY RD APT 12
MONTGOMERY AL 36116-3865
May 02 - Sep 02

DONALD FRAIKS
DOB: 6/1950 (57)

587-18-3866

1015A MULZER BLVD
MONTGOMERY AL 36113-1503
Jan 90 - Dec 91

DONALD Q FRAIKS
DOB: 6/1950 (57)

587-18-3866

1015 MULZER BLVD # A
MONTGOMERY AL 36113-1503
Jan 90 - Dec 90

DONALD FRAIKS
DOB: 6/1950 (57)

587-18-3866

1015A MOLTON BLVD
MONTGOMERY AL 36113
Jan 90

DONALD FRAIKS
DOB: 6/1950 (57)

587-18-3866

PO BOX 271
CORAL GABLES FL 33114
Feb 85 - Jan 88

DONALD FRAIKS
DOB: 6/1950 (57)

587-18-3866

4444 GENERAL DELIVERY
NORTON AIR FORCE BAS CA 92409

Exhibit 7

Customer Service Notes for Account: 4031140400908090

05/02/2007

Date Entered Notes	Desc	Desk Name
04/14/2006 04:47:55 PM	Inventory Movement	Jessica Stevens
04/14/2006 11:12:19 AM	Demographic Change	Irina Z
10/01/2005 12:00:00 AM	Inventory Movement	Ethan H
09/20/2005 10:50:31 PM	Inventory Movement	Ethan H
04/13/2005 02:16:47 PM	Demographic Change	Irina Z
04/13/2005 12:44:35 PM	Demographic Change	Irina Z
04/08/2005 03:47:19 PM	Empl Verification Attempt	Irina Z
02/28/2004 01:57:44 PM	CBR Rec'd	Irina Z
02/27/2004 10:20:26 PM	CBR Requested	Irina Z
02/27/2004 10:20:21 PM	Empl Verification Attempt	Irina Z
02/27/2004 10:20:21 PM	Legal Verif. Follow up <i>REDACTED</i>	Irina Z
01/19/2004 11:15:51 AM	Inventory Movement	Brandy H
01/17/2003 03:05:23 PM	Inventory Movement	Jessica Stevens
01/15/2003 09:23:23 AM	Approved for legal <i>REDACTED</i>	Chris B
08/23/2002 02:13:35 PM	Media Requested	System Generated
08/23/2002 12:00:00 AM	Letter	Ethan H

Date Entered Notes	Desc	Desk Name
08/21/2002 02:38:21 PM	CBR Rec'd	Ethan H
08/21/2002 12:01:58 PM	Tax Assessed	Ethan H
08/21/2002 12:01:57 PM	Submit for approval	Ethan H
08/21/2002 12:01:56 PM	Legal Write Up	Ethan H
08/21/2002 11:45:19 AM	CBR Requested	Ethan H
07/01/2002 12:00:00 AM	Research	Ethan H

Law Suits

UX382764 4031148400908090 DONALD Q FRANKS FA #

Placed Balance 3450.8600 Placed Interest 1202.1300 Batch# Case # File # Filed amount

Attorney Unfund/Out of Inv. Court MONTGOMERY County DA

Pre Jdgmt Statuses	Entered	Occur	Anytime Events	Date Entered	Expenditure Type
Dismissed Without Prej	05/30/2007	11		11	Filing Fee
Clsd - Dismissed w/Pre	05/23/2007	11			
Trial Date Pending	01/03/2007	11			
Trial Date Pending	08/22/2006	11			
Filed	06/05/2006	11			
Assigned	03/14/2006	11			

Post Jdgmt Statuses	Entered	Occur	Current Actions	Date Entered	Expected Mon
	11	11		11	

Notes HCB Suit Totals for

Exhibit B

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
Montgomery Division**

DONALD FRANKS,

Plaintiff,

v.

**Civil Action No.
2:07-cv-352-MEF**

UNIFUND CCR PARTNERS,

Defendant.

PLAINTIFF'S RESPONSES TO DEFENDANT'S INTERROGATORIES

The plaintiff, Donald Franks, in accordance with the provisions of Rule 33 of the Federal Rules of Civil Procedure, states the following in response to the Interrogatories propounded to him by the defendant in the above-entitled matter:

1. State your full name, age, residence address, business address, and date of birth.

Answer:

Name: Donald Franks

Age: 57

Residence:
4223 Matterhorn Court
Montgomery, AL 36116

Work:
Building 1085, Kelly Street
Maxwell Air Force Base
Montgomery, Alabama

DOB: June 21, 1950

2. Identify by name, address, and telephone number each person who participated in preparing the response to each of these Interrogatories.

Answer: Me and my lawyer.

3. Identify all of your residence addresses since 1995.

Answer: I have lived at the address given in the answer to Interrogatory #1, above, since before 1995.

4. Identify each person who resided or stayed with you, either temporarily or on a permanent basis, at the addresses listed in response to Interrogatory No. 3, including in your response the person's current residence address, current business address, date of birth, and relationship to you.

Answer:

Marchanda Franks
DOB: February 15, 1947
ex-wife
current address and work: unknown

Evalina T. Feliciano
Philadelphia, PA
ex-sister-in-law

Doni T. Franks
Montgomery
DOB April 19, 1985
son

5. For each of your employers for the past ten years, provide the name, address, and telephone number, dates of employment, name of your immediate supervisor, and your position or job title.

Answer:

Defense Commissary Agency (DeCA)
Maxwell Air Force Base (see answer to Interrogatory #1, above)
(334) 953-7175
dates: 2003 - present
supervisor: Lorenzo Cherry
position: Commissary Support Clerk

Dyncorp
Gunther Annex Air Force Base Gym
Montgomery, AL
3-4 months in 2003
supervisor: Rocky Riddle
Position: gym services coordinator

42nd Civil Engineering Squadron
Maxwell Air Force Base
1997-2003
supervisor: Woodrow King
position: gardener/supervisor

6. For each relative of yours living in the Middle District of Alabama, please provide the following for each relative: (a) name and address; (b) business or occupation; and (c) relationship to you, including whether by blood or marriage.

Answer: My son lives in Montgomery, but I am not sure where. I have no local relatives that have any information about this matter.

7. List the name, style, case number, jurisdiction, and date filed of every other lawsuit in which you have been a party plaintiff or party defendant.

Answer: None other than the lawsuit filed against me by Unifund in the District Court for Montgomery County, Alabama.

8. State all facts and identify all documents or materials related to all claims and allegations in the complaint, including but not limited to the contentions in Paragraph 24(a)-(f) of the Complaint.

Answer: Objection to the form of this Interrogatory. It is not possible to “state all facts” or to “identify all documents or materials” which are “related to all claims and allegations” in any case. Without waiving this objection, the plaintiff states that the material facts are set forth in the Complaint and his documents have previously been provided in his Rule 26(a) disclosures. With these responses, the plaintiff is supplementing his previous disclosures by providing copies of certain credit reports.

9. Identify by name, address, and telephone number each person with knowledge related to your claims in the Complaint, including in your answer a description of the person’s knowledge or information about the claims in the Complaint.

Answer:

See Plaintiff’s Rule 26 disclosures.

In addition:

Sue Carol Johnson
36 Elcar Circle
Montgomery, AL
(334) 834-4697

Ms. Johnson is my girl friend. I spoke with her about this situation when I was being sued and since then, and she knows about the effect this experience had on me.

10. For each person with whom you have communicated about the facts that form the basis of the Complaint, please provide the name, address, phone number, and a detailed

description of what information each person has regarding this lawsuit.

Answer: Objection to the extent that this interrogatory seeks information protected by the attorney-client privilege.

Without waiving this objection, the plaintiff answers as follows: see Rule 26 disclosures and answer to Interrogatory #9, above. My ex-wife, Marchanda Franks, called me about this around the time that the state court lawsuit was filed, and we discussed it.

11. Identify by name, address, and telephone number each person you expect to call as a witness at trial and state with particularity the matters about which each such person is expected to testify.

Answer: No decision has yet been made regarding witnesses at trial.

12. Identify by name, address, and telephone number any person you have hired, contacted, or consulted with regard to expert analysis or testimony in this case that you do not intend to call as an expert witness at trial.

Answer: Objection. See Rule 26(b)(4)(B).

13. Identify by name, address, and place of employment each person whom you expect to call as an expert witness at trial, stating for each such person: (a) the subject matter on which the expert is expected to testify; (b) the substance of the facts and opinions to which the expert is

expected to testify; and (c) a summary of the grounds for each opinion.

Answer: None at this time.

14. Provide the name of all banks, credit unions, credit card companies, or other financial institutions where you have had any type of account since 1995 and, for each account, provide the name(s) on the account, the type of account, the account number, and the location of the branch where the account was opened.

Answer: I have had only one such account. It is a checking/savings account at the Max Community Credit Union. The branch I use is located at the Maxwell Air Force Base, Montgomery.

15. Please itemize in complete detail each and every amount you claim this Defendant owes you for the claims alleged in the Complaint and set forth the basis for each.

Statutory damages under the Fair Debt Collection Practices Act, 15 U.S.C. §1692k(a)(2)(A):
\$1,000

Actual damages:

Attorney's fees paid to Douglas C. Freeman (\$450) and attorney's fees paid to Edward M. Wayland (\$500), the attorneys who represented me in the state court lawsuit filed against me by Unifund.

Mental anguish and distress:

Mr. Franks has suffered mental distress as a result of being sued to collect a debt which he does not owe. It is not possible to compute the amount of damages in this category with mathematical precision. No documents or evidence other than testimony of witnesses and documents identified above support this category of

damages.

In addition, Mr. Franks is seeking his costs and attorney's fees in the present lawsuit, as provided by 15 U.S.C. §1692k(a)(3).

See Rule 26 disclosures.

16. If any document responsive to the request for production of documents below has been lost or destroyed, identify all such documents and state with particularity where and why such documents were lost or destroyed.

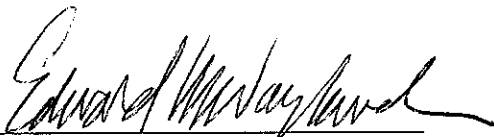
Answer: None that I know of.

17. Do you understand that the interrogatories set forth above are to be considered as continuing interrogatories requiring amendment and/or supplementation as new or additional information becomes available as required by the federal Rules of Civil Procedure?

Answer: Yes.

Respectfully submitted,

DONALD FRANKS
Plaintiff
By Counsel

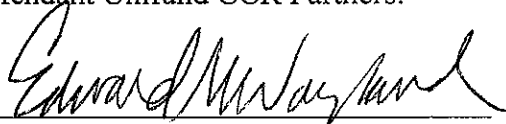


Edward M. Wayland, Esq.
AOC # WAY004
P.O. Box 17
Montgomery, AL 36101
(334) 834-9901
(334) 264-8742 (fax)
e-mail: edwayland@yahoo.com

Counsel for Plaintiff

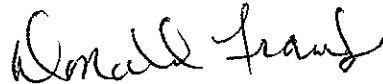
CERTIFICATION

I hereby certify that on this 4th day of November, 2007, I mailed a true copy of the foregoing Plaintiff's Answers to Defendant's Interrogatories to Angela R. Rogers, Esq. and Robert E. Poundstone, IV, Esq. Bradley Arant Rose & White, LLP, 401 Adams Avenue, Suite 780, Montgomery, AL 36104, counsel for defendant Unifund CCR Partners.


Edward M. Wayland

I, Donald Franks, am the plaintiff in this action. My attorney has drafted the answers given to the Interrogatories presented to me by the Defendants. I have reviewed these answers, and I hereby state, under penalty of perjury, that the answers are true and correct to the best of my knowledge and belief.

Dated: October 31, 2007
Montgomery, Alabama

A handwritten signature in cursive script, appearing to read "Donald Franks", written in black ink.

Donald Franks

Exhibit C

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
DOMESTIC RELATIONS DIVISION

In Re The Marriage of)
DONALD FRANKS)
and) CASE NUMBER DR-2001-1356
MARCHANDA LEE FRANKS)
Husband and Wife)

FINAL DECREE OF DIVORCE

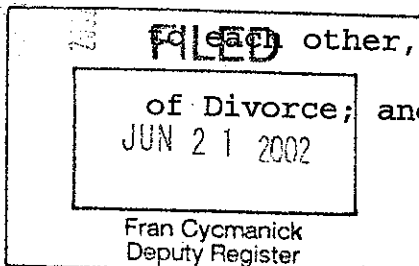
THIS CAUSE coming on to be heard at this term, was submitted upon the Petition/Complaint For Divorce, Answer and Waiver, Custody Affidavit, Child Support Guideline Forms, Agreement and testimony.

Upon consideration of the foregoing, the Court is of the opinion and finds that there does exist a valid marriage between the parties and that this Court has jurisdiction over the parties and of this cause of action and that the Plaintiff is entitled to the relief prayed for in said Petition for Divorce. It is, therefore,

ORDERED, ADJUDGED, and DECREED as follows:

1. That the bonds of matrimony heretofore existing between the parties to this cause be, and the same are hereby **DISSOLVED**, and they are each forever **DIVORCED** from the other.

2. That neither of the parties shall again marry, except for each other, until sixty days after the date of this Decree of Divorce; and if an appeal is taken then neither party shall



again marry, except to each other, during the pendency of such appeal.

3. That the Separation Agreement entered into between the parties and filed with the Court on the 20th day of June, 2002, is incorporated herein and made a part hereof, the same as if fully set out in this Final Decree, and the parties are **ORDERED** to abide by the terms and conditions thereof.

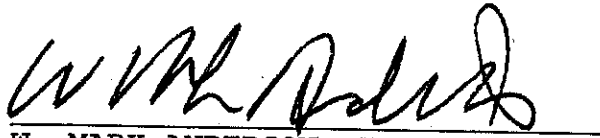
4. That reference is hereby made to a separate Order, entitled "Order of Continuing Income Withholding For Support", the entry of which is required of this Court by the provisions of Section 30-3-61 of the Code of Alabama and which is specifically incorporated herein as a part of this Decree. Said Order shall not be served on the Wife's employer until November 1, 2002.

5. That the parties have entered into a fair written agreement establishing the award of child support made herein, the adequacy of which has been reviewed by the Court and/or a Notice of Compliance form filed in accordance with Rule 32(a) ARJA. The reasons stated in the Agreement/Notice of Compliance, if any, in rebuttal of the presumption in favor of the guidelines determination of child support are adopted herein as findings of the Court.

6. That the costs have been prepaid.

7. That a copy of this Decree be transmitted to each of the parties.

DONE this the 21st day of June, 2002.



W. MARK ANDERSON, III
Circuit Judge

Kathryn Dickey

Douglas C. Freeman

EXHIBIT B PAGE 3 OF 5

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

IN RE: THE MARRIAGE OF §
DONALD FRANKS, §
Petitioner, §
and §
MARCHANDA LEE FRANKS, §
Respondent. §

DOMESTIC RELATIONS DIVISION
CASE NUMBER DR-2001-1356

AMENDED FINAL DECREE OF DIVORCE

THIS CAUSE coming on to be heard at this term, was submitted upon the Petition/Complaint for Divorce, Answer and Waiver, Custody Affidavit, Child Support Guideline Forms, Agreement and testimony.

Upon consideration of the foregoing, the Court is of the opinion and finds that there does exist a valid marriage between the parties and that this Court has jurisdiction over the parties and of this cause of action and that the Plaintiff is entitled to the relief prayed for in said Petition for Divorce. It is, therefore,

ORDERED, ADJUDGED, and DECREED as follows:

1. That the bonds of matrimony heretofore existing between the parties to this cause be, and the same are hereby **DISSOLVED**, and they are each forever **DIVORCED** from the other.
2. That neither of the parties shall again marry, except to each other, until sixty days after the date of this Decree of Divorce; and if an appeal is taken then neither party shall again marry, except to each other, during the pendency of such appeal.
3. That the Separation Agreement entered into between the parties and filed with the Court on the 20th day of June, 2002, is incorporated herein and made a part hereof, the same as if fully set out in this Final Decree, and the parties are **ORDERED** to abide by the terms and conditions thereof.

FILED

Income Withholding For Support
JUL - 2 2002

Fran Cycmanick
Deputy Register

EXHIBIT

B

PAGE

4

OF

5

Entered Min. #1064
Date 11/21/07

Section 30-3-61 of the Code of Alabama and which is specifically incorporated herein as a part of this Decree. Said Order shall not be served on the Wife's employer until November 1, 2002.

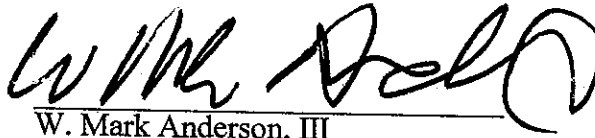
5. That the parties have entered into a fair written agreement establishing the award of child support made herein, the adequacy of which has been reviewed by the Court and/or a Notice of Compliance form filed in accordance with Rule 32 (a) ARJA. The reasons stated in the Agreement/Notice of Compliance, if any, in rebuttal of the presumption in favor of the guidelines determination of child support are adopted herein as findings of the Court.

6. That the Defendant is awarded 25 percent of the Plaintiff's military retired pay as property settlement. Plaintiff and Defendant's marriage encompassed 14 years of the Plaintiff's military service. Plaintiff's service dates were from June 11, 1970 until June 30, 1994.

7. That the costs have been prepaid.

8. That a copy of this Decree be transmitted to each of the parties.

DONE this the 1 day of July, 2002.


W. Mark Anderson, III
Circuit Judge

Kathryn Dickey

Douglas C. Freeman

EXHIBIT B PAGE 5 OF 5

645

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
DOMESTIC RELATIONS DIVISION

IN RE THE MARRIAGE OF

DONALD FRANKS
PETITIONER

V.

MARCHANDA LEE FRANKS
RESPONDENT

*
*
*
*
*
*
*
*

CASE NO. DR-2001-1356

SEPARATION AGREEMENT

The above-named parties desiring to settle all property and financial matters by mutual agreement with the intent and purpose that in the event a divorce shall be granted to the parties, it is agreed that this Agreement shall be submitted to the Court for its approval and upon such approval shall be incorporated as a part of the Final Decree of Divorce granted by the Court.

In agreement, the parties set forth the following:

1. **EFFECTIVE DATE:** This Agreement shall become effective upon the date of execution thereof.
2. **RELATIONSHIP OF THE PARTIES:** Neither party shall hereafter do any act, directly or indirectly, to harass, molest, intimidate, or bother the other in any manner whatsoever; each party shall be free to live at such place or places as he or she may elect, free from all dominion, control, or restraint of the other party.
3. **EXECUTION OF INSTRUMENTS:** Each party shall within thirty (30) days of the entry of a Final Decree of Divorce execute and deliver to the other party all instruments which may be necessary, convenient, or appropriate to carry into effect any provision of this Agreement.

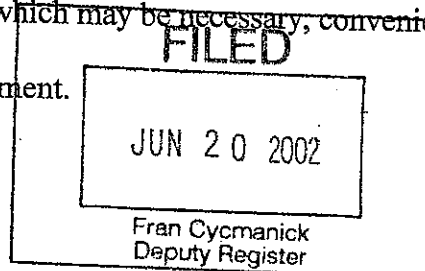


EXHIBIT C PAGE 1 OF 6

Entered Min. # 664
Page 334

4. **CUSTODY OF THE MINOR CHILD:** There was one (1) child born to this marriage, namely, Doni Torien Franks, whose date of birth is 4-25-1985. The Husband shall have the permanent care, custody and control of the parties' minor child, subject to the Wife's right of visitation, which is set out in the following provision.

5. **VISITATION:** The parties having mutually agreed, the Wife shall have reasonable and seasonable visitation rights with the minor child to be arranged between the Wife and the minor child. The parties further mutually agree that neither party shall consume controlled substances within twenty-four (24) hours prior to any period of visitation or during any period of visitation, or allow anyone in their presence with the minor child to use any controlled substances. The parties further mutually agree that neither party shall have unrelated late night or overnight company of the opposite sex, to whom he or she is not married or related to by blood, during any period of visitation or custodial care. In the presence of the minor child neither party shall criticize or defame the other or call into question to parental authority of the other party, nor allow a third party to do so.

6. **CHILD SUPPORT:** The parties that the Wife is obligated according to the Child Support Guidelines the sum of One Hundred Thirty-Four and Twenty-Five Hundredths Dollars (\$134.25) per month as child support. On account of an integrated property division settlement, the parties agree that the Wife's child support obligation afore stated shall commence on November 1, 2002, and continuing until the minor child reaches the age of nineteen (19) years, marries, or otherwise becomes self-supporting. The Husband and Wife mutually agree that the said child support payments shall be made by the Wife by direct payment to the Husband through the Alabama Child Support Payment Center, and not by immediate service of the Order of Wage Withholding. The parties further mutually agree that the Order of Wage Withholding shall be

served on the Wife's employer on or after October 1, 2002 so as to put the employer on notice to withhold the said child support commencing November 1, 2002. It shall be the responsibility of the Husband to insure that the Deputy Register of the Circuit Court of Montgomery County issue the Order of Wage Withholding in a timely fashion to accomplish the result envisioned by the said stated agreement. Reference is made herein to a separate Order entitled Order of Wage Withholding, the entry of which shall be specifically incorporated as a part of the Court's Final Decree of Divorce. That the parties acknowledge that the foregoing agreement establishing child support does comply with Rule 32(A)(1), A.R.J.A., although strict compliance pursuant to the parties' integrated personal property division agreement will cause the delay of the commencement of the child support until November 1, 2002 due to the fact that the parties have agreed to offset the child support amount against the personal property division amount.

7. **ALIMONY:** The parties agree to waive all claims to alimony from and unto one another.

8. **DIVISION OF PROPERTY:**

a. The Husband shall have sole right, title and interest in any and all personal property presently in his possession, excluding the items listed in paragraph b herein below.

b. That the parties mutually agree that the Wife shall have sole right, title and interest in the personal property presently in her possession, and the property in the foregoing list as follows:

- i. Her personal effects and belongings
- ii. Art work /Pictures on bedroom wall
- iii. One half of parties tubberware
- iv. All canisters

v. Sewing machine

vi. Bird

The parties further mutually agree that the Wife shall retrieve said items from Husband's possession within thirty (30) days of her signing this Separation Agreement.

c. The parties further mutually agree that the Husband shall pay to the Wife the sum of One Thousand and Zero Hundredths Dollars (\$1,000.00) at the rate of One Hundred Sixty-Six and Sixty-Seven Hundredths Dollars (\$166.67) commencing May 15, 2002, and ending with the payment due on or before October 15, 2002. Said payments shall be made by the Husband by offsetting the child support that he would receive from the Wife (\$134.25) from the \$166.67, resulting in a net payment to the Wife of \$32.42 per month for a period of six (6) month commencing in May 2002 and ending in October 2002.

d. The parties further mutually agree that the Wife shall be entitled to receive twenty-five percent (25%) of the Husband's gross retirement less mandatory deductions from his military retirement pay. The parties further mutually agree that the Wife's attorney shall be solely responsible for implementing this provision for the benefit of the Wife. The Husband further agrees to do all acts necessary and appropriate to provide the Wife with access to military privileges to which a former spouse is entitled. The Wife agrees to use the military privileges to which she is entitled in a manner that is lawful and appropriate so as not to jeopardize the Husband's access to his military privileges or status as a military retired person.

e. The parties mutually agree that the parties' real property located at 4223 Matterhorn Court, Montgomery, Alabama 36116 shall be the sole and exclusive property of the Husband, and the Husband shall have sole and exclusive use, possession, and ownership of the said property. The Wife shall transfer all of her right, title, and interest in said property to the

Husband by execution of a quitclaim deed simultaneously with her execution of this Separation Agreement thereby divesting herself of her interest in said property.

10. ASSUMPTION OF INDEBTEDNESS:

- a. The parties further agree that both parties shall assume their individual debts and each shall hold the other harmless from any individual debts that they have incurred.
- b. Neither party shall hereafter directly or indirectly incur further debts or credit obligations which would obligate the other party, either individually or jointly.
- c. The parties mutually agree that the Husband shall assume sole liability and responsibility for repayment of the parties' debt to Homecomings Mortgage Company, mortgagor on the marital residence located at 4223 Matterhorn Court, Montgomery, Alabama 36116, and the Husband holds the Wife harmless therefrom.

11. MAIDEN NAME: The parties agree that the Wife shall be entitled to resume use of her maiden name, Hill.

12. ENFORCEMENT OF THIS AGREEMENT: Should either party be required to seek legal assistance or initiate litigation in the enforcement of this Agreement, then the party violating said Agreement shall be charged with all of the expenses incurred by the enforcing party, to include attorney's fees and Court costs.

13. INCORPORATION OF AGREEMENT: In the event that a Decree shall be granted to the parties pursuant to proceedings heretofore instituted, it is agreed that this Agreement shall be submitted to the Court for its approval and upon such approval shall be incorporated as a part of the said Final Decree of Divorce granted by the Court.

This Agreement has been made and executed by the parties hereto on this the

_____ day of _____, 2002, with full understanding of all

its provisions and with mutual promise on the part of each to comply fully and faithfully therewith.


Donald Franks

THIS AGREEMENT ACKNOWLEDGED AND SIGNED IN MY PRESENCE on
this the 14th day of May, 2002.

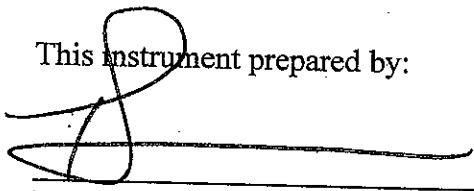

NOTARY PUBLIC


Marchanda Lee Franks

THIS AGREEMENT ACKNOWLEDGED AND SIGNED IN MY PRESENCE on
this the 10 day of June, 2002.


NOTARY PUBLIC

This instrument prepared by:


Douglas C. Freeman (FRE021)
Attorney for Petitioner
456 South Court Street
Montgomery, Alabama 36104-4102
(334) 264-2000

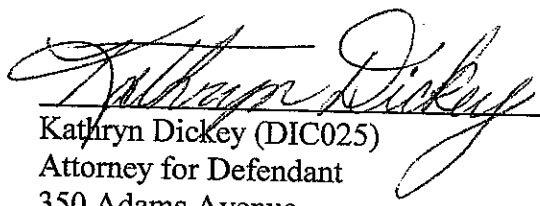

Kathryn Dickey (DIC025)
Attorney for Defendant
350 Adams Avenue
Montgomery, Alabama 36104
(334) 264-6401

EXHIBIT C PAGE 6 OF 6